

Section-by-Section Summary

RESTORING AMERICAN FINANCIAL STABILITY ACT OF 2009

Sec. 1. Short title; table of contents

Sec. 2. Definitions

Sec. 3. Severability

Sec. 4. Effective Date

Title I – Agency for Financial Stability

Section 101. Short Title

The title may be cited as the “Financial Stability Act of 2009.”

Section 102. Definitions

This section defines various terms used in the title. “Agency” means the Agency for Financial Stability, established under this title. “Bank holding company” has the meaning given it in section 2 of the Bank Holding Company Act (“BHCA”). “U.S. nonbank financial company” means a company (other than a bank holding company) that is incorporated in the U.S. and engaged in whole or in part in activities that are financial in nature (as defined in section 4(k) of the BHCA). “Foreign nonbank financial company” means a company (other than one treated as a bank holding company) that is incorporated outside the U.S. and engaged in whole or in part in activities in the U.S. that are financial in nature. A “financial company” refers to a U.S. nonbank financial company, foreign nonbank financial company, or bank holding company. A “specified financial company” refers to a financial company that is subject to enhanced supervision and prudential standards under section 107.

Section 103. Agency for Financial Stability Established

This section establishes the Agency, governed by a board of directors with the following membership: (1) the Chairperson of the Agency (appointed by the President, with the advice and consent of the Senate), (2) the Secretary of the Treasury, (3) the Chairman of the Board of Governors of the Federal Reserve System, (4) the Chairperson of the Financial Institutions Regulatory Administration (“FIRA”), (5) the Director of the Consumer Financial Protection Agency, (6) the Chairman of the Securities and Exchange Commission, (7) the Chairperson of the Federal Deposit Insurance Corporation (“FDIC”), (8) the Chairperson of the Commodity Futures Trading Commission, and (9) an independent member (appointed by the President, with the advice and consent of the Senate) having experience in insurance industry or regulation.

The Chairperson and the independent member will have six-year terms. The Agency’s board of directors will meet at the call of the Chairperson at least once per quarter. The Agency will have its own employees and may also have personnel detailed from other Federal agencies.

Section 104. Agency Authority

This section enumerates the purposes and duties of the Agency, which include: (1) collecting information in order to assess risks to the financial system; (2) monitoring the financial services

Section-by-Section Summary

marketplace to identify threats to U.S. financial system stability; (3) facilitating information sharing among the member agencies; (4) identifying gaps in regulation that could pose risks to U.S. financial system stability; (5) requiring financial companies that may pose threats to U.S. financial system stability or economic growth in the event of their material financial distress or failure to submit to heightened supervision and prudential standards; (6) prescribing heightened prudential standards for such companies; (7) setting heightened capital, leverage, and liquidity standards that increase on a graduated basis for certain large bank holding companies; (8) identifying systemically important financial market utilities and payments, clearing, and settlement system activities and subjecting them to prudential standards by the Board of Governors of the Federal Reserve System; (9) providing a forum for discussion, analysis, and resolution of jurisdictional disputes among member agencies; and (10) reporting to and testifying before Congress.

The section also authorizes the Agency to obtain information from the member agencies and financial companies to carry out the provisions of this title.

Section 105. Authority to Require Supervision and Regulation of Financial Companies to Mitigate Systemic Risk

This section authorizes the Agency to identify financial companies that may pose threats to U.S. financial system stability or the U.S. economy in the event of their material financial distress or failure. These companies, designated as specified financial companies, would be subject to heightened supervision and prudential standards. The Agency will provide written notice to each financial company of its proposed determination and the company would have the opportunity for a hearing before the Agency to contest the proposed determination. The Agency will consult with the primary federal regulatory agency of each financial company or subsidiary of the company that is being considered for designation as a specified financial company.

Section 106. Registration with FIRA by Specified Financial Companies

This section directs specified financial companies to register with FIRA (other than specified bank holding companies or other financial companies already registered with FIRA).

Section 107. Enhanced Supervision and Prudential Standards for Specified Financial Companies

This section directs the Agency to establish prudential standards and reporting and disclosure requirements for specified financial companies that are more stringent than those applicable to other U.S. financial companies and increase in stringency with certain characteristics of the company, including its size and complexity. The prudential standards will include risk-based capital requirements, leverage limits, liquidity requirements, a contingent capital requirement, resolution plan and credit exposure report requirements, prompt corrective action, concentration limits, and overall risk management requirements. The section enumerates the factors that the Agency shall consider in setting the standards. It requires that all specified financial companies remain well capitalized and well managed as defined by the Agency under this title. It also requires that each specified financial company establish a risk committee to be responsible for oversight of enterprise-wide risk management practices of the company. The section also includes a contingent capital requirement under which each specified financial company would maintain a minimum amount of long-term debt that is convertible to equity under certain conditions, and enumerates the factors that the Agency shall consider in rulemaking.

Section-by-Section Summary

Section 108. Heightened Standards for Bank Holding Companies that are Not Specified Financial Companies

This section directs the Agency to establish heightened risk-based capital, leverage, and liquidity requirements for bank holding companies that are not specified financial companies. The Agency may not apply the heightened standards to any bank holding company with total assets under \$10 billion. The standards would apply to bank holding companies on a graduated basis, and the Agency should ensure, to the extent possible, that small changes in the factors used to set the standards (e.g., changes in the amounts and nature of financial assets) do not trigger sharp, discontinuous changes in the standards.

Under this section, the Agency will also establish rules to require bank holding companies that are publicly traded companies with total assets of not less than \$10 billion to establish a risk committee.

Section 109. Reports and Public Disclosures

Under this section, the Agency may require reports from specified financial companies and their subsidiaries, but will use existing reports to the fullest extent possible. The Agency may prescribe, by regulation, enhanced public disclosures by specified financial companies in order to support market evaluation of the companies' capital adequacy and risk profiles.

The section also directs the Agency to require that each specified financial company periodically submit to the Agency, FIRA, and the FDIC: (1) a plan for rapid and orderly resolution in the event of material financial distress or failure; and (2) a report on credit exposures between the specified financial companies and other significant financial companies (as defined through Agency rulemaking). FIRA and the FDIC will jointly determine whether the resolution plan is credible and would facilitate an orderly resolution under the bankruptcy code or the resolution authority authorized in title II. Specified financial companies will have to resubmit resolution plans to correct deficiencies. Failure to resubmit a plan correcting deficiencies within a timeframe determined by the Agency may result in FIRA and the FDIC imposing more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the specified financial company. If, two years after the imposition of these requirements or restrictions, the company still has not resubmitted a plan that corrects the deficiencies identified by FIRA and the FDIC, these two agencies, in consultation with the Agency, may direct the company to divest certain assets or operations in order to facilitate an orderly resolution in the event of failure.

Section 110. Affiliations

This section affirms that nothing in this title requires a specified financial company to conform its activities to the requirements of section 4 of the BHCA (12 U.S.C. 1843). If a specified financial company does conduct activities that are not financial in nature or incidental thereto under section 4(k) of the BHCA, the Agency may require the specified financial company to establish an intermediate holding company that would house the company's financial activities. The Agency shall promulgate regulations to implement this section, including the criteria for requiring an intermediate holding company and any restrictions or limits on transactions between such holding company and its affiliates.

Section 111. Prompt Corrective Action for Specified Financial Companies

This section authorizes the Agency to take prompt corrective action to resolve capital deficiencies and other problems of specified financial companies. The provisions are substantively similar to the prompt corrective action requirements established in the Federal Deposit Insurance Act ("FDIA"). The Agency must establish capital thresholds to delineate the capital categories of well

Section-by-Section Summary

capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. FIRA must monitor any undercapitalized specified financial company, which must submit a capital restoration plan acceptable to FIRA. Requirements and restrictions would become more stringent for significantly undercapitalized specified financial companies. And within 90 days of a specified financial company becoming critically undercapitalized, FIRA, in consultation with the FDIC, must require that the company file for bankruptcy, file a petition for involuntary bankruptcy on behalf of the company, or submit a written recommendation to the Secretary for use of the resolution authority in Title 2.

Section 112. Concentration Limits

This section requires the Agency to establish regulations that impose limits on credit exposure to lessen the risks that the failure of a specified financial company could pose to another financial company or the stability of the U.S. financial system. Each specified financial company's credit exposure to any unaffiliated company may not exceed 25 percent of the specified financial company's capital stock and surplus (or a lower amount that the Agency may determine by regulation is necessary to mitigate risks to financial stability). The section defines credit exposures and permits the Agency, by regulation or order, to exempt transactions if the Agency finds that it is in the public interest to do so and consistent with the purposes of this section. The rules established under this section shall not take effect for 3 years after the publication of the final rule, with the possibility of two additional years, to allow for an orderly transition period.

Section 113. Regulations

This section requires the Agency to issue final regulations to implement this title no later than 18 months after the date of enactment, unless otherwise specified.

Section 114. Avoiding Duplication

This section directs the Agency to take actions necessary to avoid imposing requirements under this title that are duplicative of requirements applicable to financial companies under other provisions of law.

Section 115. Agency Funding

This section establishes a Financial Stability Fund in the U.S. Treasury to pay for expenses of the Agency and collect fees and assessments to cover those expenses. During the 2-year period following the date of enactment, the Board of Governors of the Federal Reserve System shall transfer to the Agency an amount sufficient to cover its expenses. After two years, the Agency shall establish by regulation an assessment schedule to charge specified financial companies for the expenses of the Agency. To the extent that a shortfall exists, the Board of Governors of the Federal Reserve System shall provide the Agency an amount sufficient to cover the shortfall.

Section 116. Resolution of Disputes among Member Agencies

This section authorizes a dispute resolution function for the Agency. The agency shall resolve disputes among member agencies about the respective jurisdiction over a particular financial company, activity, or product if the agencies cannot resolve the dispute without the Agency's intervention. The section prescribes the procedures for dispute resolution and makes the Agency's written decision binding on parties to the dispute.

Section-by-Section Summary

Section 117. Additional Standards Applicable to Activities or Practices for Financial Stability Purposes

This section authorizes the Agency to issue recommendations to the primary financial regulatory agencies to apply new or heightened prudential standards and safeguards, including those enumerated in sections 107 and 108, for a financial activity or practice conducted by financial companies under the agencies' jurisdiction. The Agency would make such recommendation if it determines that the conduct of the activity or practice could create or increase the risk of significant liquidity, credit, or other problems spreading among financial companies or U.S. financial markets. The section requires that the Agency consult with the primary financial regulatory agencies, provide notice and opportunity for comment on any proposed recommendations, and consider the effect of any recommendation on costs to long-term economic growth. The Agency may recommend specific actions to apply to the conduct of a financial activity or practice, including limits on scope or additional capital and risk management requirements.

Section 118. Effect of Rescission of Identification.

This section requires the Agency to inform the primary financial regulatory agency (or agencies) of any Agency determination that a specified financial company, activity, or practice no longer requires any heightened standards implemented under this title. The primary financial regulatory agency may determine whether or not to keep such standards in effect.

Section 119. Mitigation of Systemic Risk.

This section authorizes the Agency and FIRA, after notice and opportunity for hearing, to require a specified financial company to sell or transfer assets to unaffiliated entities, to terminate certain activities, or to comply with conditions on conduct of certain activities. The Agency and FIRA would impose such requirements if, even after imposition of heightened prudential standards and other requirements under this title, the size, scope, or nature of activities of the specified financial company pose a threat to its safety and soundness or to U.S. financial stability.

Section 120. Rule of Construction

This section states that Agency rules and standards imposed under this title shall supersede any conflicting, less stringent requirements of the primary financial regulatory agency, but only to the extent of the conflict.

Section-by-Section Summary

Title II – Enhanced Resolution Authority

Section 201. Definitions

This section defines various terms used in this title. A “financial company” includes: (1) a bank holding company, as defined in section 2(a) of the Bank Holding Company Act (“BHCA”), (2) a specified financial company, as defined in section 102, (3) a company predominantly engaged in activities that are financial in nature, as defined in section 4(k) of the BHCA, and (4) subsidiaries of any of these companies (except an insured depository institution, an insurance company, or any broker or dealer registered with the Securities and Exchange Commission (“SEC”) and which is a member of the Securities Investor Protection Corporation). A “covered financial company” is a financial company for which a determination has been made to use the resolution authority under section 202. The “appropriate Federal regulatory agency” (“AFRA”) means the FDIC, unless the largest subsidiary of the financial company is a broker or dealer, in which case it means the SEC.

Section 202. Systemic Risk Determination

This section establishes the process for triggering the use of the resolution authority. The board of the Financial Institutions Regulatory Administration (“FIRA”) and the board (or commission) of the AFRA must each, by a two-thirds vote of its members then serving, provide a written recommendation to the Secretary that includes: (1) an evaluation of whether a specified financial company is in default or in danger of default; (2) a description of the effects that the failure of the specified financial company would have on U.S. economic conditions or financial stability; and (3) the nature and extent of actions that should be taken under section 203. (The Secretary of the Treasury, Chairperson of FIRA, or Chairperson of the Agency for Financial Stability may request FIRA and the AFRA to consider making the recommendation, or FIRA and the AFRA may make the recommendation on their own initiative.)

Upon receiving such recommendations, the Secretary (in consultation with the President) may make a written determination that: (1) the specified financial company is in default or in danger of default; (2) the failure of the specified financial company and its resolution under otherwise applicable law would have serious adverse effects on U.S. financial stability or economic conditions; and (3) any action under section 203 would avoid or mitigate such adverse effects. The Secretary would take into consideration the effectiveness of the action in mitigating adverse effects on the financial system and economy, any cost to the Treasury, and the potential to increase excessive risk taking on the part of creditors, counterparties, and shareholders in the covered financial company.

The Secretary shall submit a report to Congress within 30 days of any determination, and the Government Accountability Office will review and report on the Secretary’s determination.

Section 203. Resolution; Stabilization

This section requires that the Secretary appoint the FDIC as receiver of the covered financial company after a section 202 determination. The FDIC, as receiver, must consult with primary financial regulatory agencies of: (1) the covered financial company and its covered subsidiaries to ensure an orderly resolution; and (2) any subsidiaries that are not covered subsidiaries to coordinate the appropriate treatment of any such solvent subsidiaries and the separate resolution of any such insolvent subsidiaries under other governmental authority, as appropriate.

Once it has been appointed receiver, the FDIC, with the approval of the Secretary, may take certain actions with respect to the covered financial company or any covered subsidiary. These actions

Section-by-Section Summary

include: (1) making loans or purchasing debt; (2) purchasing assets or guaranteeing assets against loss; (3) assuming or guaranteeing obligations to third parties; (4) taking a lien on assets; and (5) selling or transferring any acquired assets, liabilities, and obligations. The FDIC may take any such actions only if it determines that such actions are necessary for financial stability and not for the purpose of preserving the covered financial company, and must receive the written approval of the Secretary. The FDIC must also ensure that shareholders would not receive any payment until after all other claims are fully paid, that the FDIC's actions would not prevent creditors from bearing losses, and that management responsible for the company's failure has been removed.

Section 204. Judicial Review

This section provides that if the Secretary appoints the FDIC as receiver pursuant to section 203, the covered financial company has 30 calendar days to challenge the appointment in federal district court.

Section 205. Directors not Liable for Acquiescing in Appointment of Receiver

This section exempts the board of directors of a covered financial company from liability to the company's shareholders or creditors for acquiescing or consenting in good faith to appointment of a receiver under section 203 or an acquisition, combination, or transfer of assets or liabilities under section 208.

Section 206. Termination and Exclusion of Other Actions

This section provides that receivership under section 203 for a covered financial company shall terminate and prevent any other bankruptcy or insolvency proceeding under federal or state law.

Section 207. Rulemaking

This section authorizes the FDIC, in consultation with the Agency for Financial Stability, to prescribe such rules or regulations as considered necessary or appropriate to implement this title.

Section 208. Powers and Duties of the Corporation

Subsection (a). Powers and Authorities.

The FDIC's powers and duties as receiver are substantively similar to those for a receiver under the Federal Deposit Insurance Act (FDIA). These powers and duties include: (1) succeeding to the rights, title, powers, and privileges of the covered financial company and its stockholders, officers, and directors; (2) taking over the assets of, and operating, the company with all the powers of shareholders, directors, and officers; (3) liquidating the company through sale of assets or transfer of assets to a bridge financial company established under subsection (h); (4) merging the company with another company or transferring assets or liabilities; (5) paying valid obligations that come due, to the extent that funds are available; (6) exercising subpoena powers; (7) utilizing private sector services to manage and dispose of assets; (8) terminating rights and claims of stockholders and creditors (except for the right to payment of claims); and (9) determining and paying claims.

Subsection (b). Priority of Expenses and Unsecured Claims.

The priority of expenses and unsecured claims is substantively similar to the FDIA (12 U.S.C. § 1821(d)(11)), except that specific language is added giving the United States a second priority position

Section-by-Section Summary

(in place of deposit claims in the FDIA) after administrative expenses. All claimants of a covered financial company that are similarly situated in the expenses and claims priority shall be treated in a similar manner except in cases where the FDIC determines that doing otherwise would: maximize the asset value of the company; maximize the present value of the proceeds (or minimize the amount of any loss) from disposing of the assets of the company; or contain serious adverse effects on financial stability and the U.S. economy.

Subsection (c). Provisions Relating to Contracts Entered Into Before Appointment of Receiver.

This subsection authorizes the FDIC to repudiate and enforce contracts and handle the financial company's qualified financial contracts (including derivatives) in a manner substantively similar to the authority of the FDIC under the FDIA (12 U.S.C. § 1821(c)). However, a counterparty to a qualified financial contract would be stayed from terminating, liquidating, or netting the contract (solely by reason of the appointment of a receiver) until 5:00 PM on the third business day after the date that the FDIC was appointed receiver.

Subsection (d). Valuation of Claims in Default.

This subsection is similar in certain respects to the FDIA's valuation of claims in default (12 U.S.C. § 1821(i)). It establishes the FDIC's maximum liability for claims against the covered financial company (or FDIC as receiver) as the amount that the claimant would have received if no determination was made under section 202 and the company was liquidated under title 11 of the U.S. Code or any State insolvency law. The subsection also authorizes the FDIC, as receiver and with the Secretary's approval, to make additional payments to claimants only if the FDIC determines this to be necessary to minimize losses or to mitigate serious adverse effects on financial stability or the U.S. economy.

Subsection (e). Limitation on Court Action.

This subsection generally precludes a court from granting injunctive relief against the FDIC when it is exercising its powers as receiver (substantively similar to the FDIA (12 U.S.C. § 1821(j)).

Subsection (f). Liability of Directors and Officers.

This subsection provides that FDIC may take actions to hold directors and officers of a covered financial company personally liable for monetary damages with respect to gross negligence. It is substantively similar to the FDIA (12 U.S.C. § 1821(k)).

Subsection (g). Damages.

This subsection provides that recoverable damages in claims brought against directors, officers, or employees of a covered financial company for improper investment or use of company assets include principal losses and appropriate interest. It is substantively similar to the FDIA (12 U.S.C. § 1821(l)).

Subsection (h). Bridge Financial Companies.

This subsection authorizes the FDIC, as receiver, to establish one or more bridge financial companies. At the FDIC's discretion, such bridge financial companies may assume liabilities and purchase assets of the covered financial company, and perform other temporary functions that the FDIC may prescribe. The subsection is substantively similar to the FDIA (12 U.S.C. § 1821(n)).

Section-by-Section Summary

Subsection (i). Sharing Records.

This subsection requires FIRA to make available to the FDIC all records relating to the covered financial company. This subsection is substantively similar to the FDIA (12 U.S.C. § 1821(o)).

Subsection (j). Expedited Procedures for Certain Claims.

This subsection expedites federal courts' consideration of cases brought by the FDIC against a covered financial company's directors, officers, employees, or agents. It is substantively similar to the FDIA (12 U.S.C. § 1821(q)).

Subsection (k). Foreign Investigations.

This subsection authorizes the FDIC, as receiver, to request assistance from, and provide assistance to, any foreign financial authority. It is substantively similar to the FDIA (12 U.S.C. § 1821(r)).

Subsection (l). Prohibition on Entering Secrecy Agreements and Protective Orders.

This subsection prohibits the FDIC from entering into any agreement that prohibits it from disclosing the terms of any settlement of any action brought by the FDIC as receiver of a covered financial company. It is substantively similar to the FDIA (12 U.S.C. § 1821(s)).

Subsection (m). Liquidation of Certain Covered Financial Companies or Bridge Financial Companies.

This subsection provides that the FDIC, as receiver, in liquidating any covered financial company or bridge financial company that is either (1) a stockbroker that is not a member of SIPC, or (2) a commodity broker, will apply the applicable liquidation provisions of the bankruptcy code pertaining to "stockbrokers" and "commodity brokers" (as such terms are defined in subchapters III and IV, respectively, of chapter 7 of title 11 of the U.S. Code).

Subsection (n). Systemic Resolution Fund.

This subsection creates a fund that will be available to the FDIC to carry out the authorities in this title, including the payment of administrative expenses and payment of principal and interest on obligations issued to the Treasury that would be used to capitalize the fund.

Subsection (o). Risk-Based Assessments.

This subsection requires the FDIC to recover amounts expended under this title that have not otherwise been recouped by imposing one or more risk-based assessments on financial companies. FDIC would determine the terms and conditions of the assessment, with the concurrence of the Secretary and the Agency for Financial Stability. Any funds borrowed from the Treasury in connection with a determination under section 202 and actions taken under section 203 must be fully repaid within 60 months (with a possibility of an extension to avoid adverse effects on financial stability and the U.S. economy). The FDIC may not assess any financial company that has total assets less than \$10 billion. The subsection also outlines factors that the FDIC shall consider in imposing risk-based assessments.

Section 209. Clarification of Prohibition Regarding Concealment of Assets from Receiver or Liquidating Agent

This section makes a conforming change to a provision of the criminal code relating to concealment of assets from the FDIC acting as receiver of a covered financial company.

Section-by-Section Summary

Section 210. Miscellaneous Provisions

This section makes conforming change to the bankruptcy code by adding covered financial companies to those entities excluded from the definition of the term “debtor,” and clarifies the systemic risk exception provision in the FDIA. This section also makes conforming change to the netting provisions contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 by expanding the exceptions to include section 208(c) of this Act and section 1367 of the HERA (12 U.S.C. § 4617(d)).

Section-by-Section Summary

Title III – Financial Institutions Regulatory Administration

Section 301. Short Title and purposes

The short title is “Enhancing Financial Institution Safety and Soundness Act of 2009.” Among the purposes of the title are to provide for the safe and sound operation of the banking system; to preserve and protect the dual banking system of federal and state chartered depository institutions; and to streamline and rationalize the supervision of depository institutions and their holding companies.

Section 302. Definitions

Defines key terms used in this title, including, “covered institutions” which are the financial institutions subject to regulation by the Financial Institutions Regulatory Administration, and “transfer date” which is the date that is 1 year after the date of enactment or another date not later than 18 months if so designated by the Secretary of the Treasury. The transfer date is the date upon which various functions are transferred to the Financial Institutions Regulatory Administration. The transfer of personnel, property and funding are also keyed to the transfer date.

Subtitle A – Financial Institutions Regulatory Administration Established

Section 311. Establishment of Administration

Establishes a new independent agency, the Financial Institutions Regulatory Administration, “FIRA”. It amends other federal laws to add FIRA, the Agency for Financial Stability and the Consumer Financial Protection Agency to the list of independent regulatory agencies that are free from certain federal information collection requirements and are not required to submit legislative recommendations or testimonies for prior approval.

Section 312. Board of Directors of the Administration

Establishes a 5 member board of directors to manage FIRA. The board is comprised of the Chairperson of the FDIC, the Chairman of the Federal Reserve Board, and 3 individuals appointed by the President with the advice and consent of the Senate. Not more than 3 board members may be from the same political party. The Chairperson has a 5 year term. The Vice Chairperson must have experience in state bank supervision. The term of independent board members is 6 years.

This section also provides for the filling of Board vacancies, imposes employment restrictions on Board members, both during the individual’s service on the Board and post service restrictions, and sets the Executive Service levels for Board members’ compensation.

Section 313. State Bank Advisory Board

Establishes a State Bank Advisory Board within FIRA. The Advisory Board is comprised of 5 state bank commissioners serving on a rotating basis for 2 years. The Advisory Board is tasked with keeping the FIRA Board informed about developments and issues relating to state banks and making recommendations to the FIRA Board concerning: rules, guidelines and orders of FIRA; the streamlining of the regulation and supervision of state-chartered community banks; and policies of FIRA that may affect the financial performance, condition, efficiency or competitiveness of state banks.

Section-by-Section Summary

Section 314. Division of Community Bank Supervision

Establishes the Division of Community Bank Supervision within FIRA specifically to make recommendations to FIRA for standards appropriate to the supervision of community banks; to examine and supervise community banks; and to promote a healthy community bank sector. The Division is headed by a Director appointed by the Chairperson of FIRA who reports directly to the Chairperson.

This section also expressly prohibits any FIRA Board member and any employee of FIRA from promoting the conversion of a state bank to a national bank, subject to rules by the FIRA Board in consultation with the State Bank Advisory Board.

Subtitle B – Transfer of Powers and Duties to FIRA

Section 321. Transfer Date

Establishes a transfer date of 1 year by which existing agency powers must be transferred to FIRA. Personnel and property must be transferred within 90 days of the transfer date. This section also establishes a process under which the Secretary of the Treasury may designate another date, but no later than 18 months.

Section 322. Powers and Duties Transferred

Upon the transfer date, all functions of the OCC and OTS are transferred to FIRA. All functions of the FDIC relating to supervision and regulation of state nonmember banks and insured state branches of foreign banks are transferred to FIRA. The FDIC's functions relating to deposit insurance and resolution are specifically not transferred. All functions of the FRB relating to supervision and regulation of member banks, bank holding companies and their affiliates, foreign banks and branches, agencies and representative offices of foreign banks, commercial lending companies, and companies operating under the International Banking Act of 1978 are transferred to FIRA. Specifically, the FRB's functions relating to monetary policy, open market operations, payment, settlement or clearing activities, financial market utilities, and advances or extensions of credit under the Federal Reserve Act are reserved for the FRB.

Section 323. Abolishment

Abolishes the OCC and OTS.

Section 324. Savings Provisions

Preserves existing rights, duties and obligations of the OCC, OTS, FDIC, and FRB that existed on the day before the transfer date. This section also preserves existing law suits by or against the OCC, OTS, FDIC, or the FRB, but substitutes FIRA for these agencies upon the transfer date where their functions have been transferred to FIRA.

This section also continues existing orders, regulations, determinations, agreements, procedures, interpretations and advisory materials of the agencies whose functions are transferred to FIRA.

Section 325. References in Federal Law to Federal Banking Agencies

Provides that references in federal law to the OCC or OTS, or to the FDIC or the FRB with respect to functions transferred to FIRA, are deemed to be references to FIRA.

Section-by-Section Summary

Subtitle C – Operations of FIRA

Section 331. Transferred powers, authorities, rights, and duties

Gives FIRA all powers, authorities, rights and duties vested in the OCC and OTS, and in the FDIC and the FRB with respect to the functions transferred to FIRA.

Section 332. Regulations and Orders

FIRA may prescribe regulations, guidelines and orders as appropriate to carry out its powers.

Section 333. Additional Powers and Duties of the Chairperson

The Chairperson of FIRA shall also serve on the boards of the Agency for Financial Stability and the Consumer Financial Protection Agency, and assume the Comptroller of the Currency's position on the board of the Neighborhood Reinvestment Corporation.

This section gives FIRA independent litigating authority.

Section 334. Additional Powers of the Board of Governors and the Federal Deposit Insurance Corporation

The FRB may request information from financial institutions and FIRA, and request that its employees participate with FIRA in any examination if the FRB determines such information or participation are necessary to carry out its responsibilities for monetary policy, open market operations, payment, settlement, or clearing activities, financial market utilities, or advances or extensions of credit under the Federal Reserve Act. FIRA must provide the FRB with information it requests and must coordinate with the FRB to enable FRB employees to participate in exams.

The Chairperson of the FDIC is given the same access to information and participation in examinations when the FDIC determines the information or participation is necessary to carry out the FDIC's responsibilities relating to deposit insurance or resolution.

Section 335. Funding

This section sets forth the funding for FIRA, including the establishment of the FIRA Fund. The Chairperson may collect assessments, fees, or other charges from the financial institutions subject to its supervision to carry out its responsibilities. In establishing the appropriate assessment, fee or charge, the Chairperson may take into account the total assets of any institution, the financial and managerial condition of the institution, and the examination rating of the institution.

Fees for federally chartered institutions -- With respect to federally chartered institutions, the amount of assessments, fees, or charges must at least cover the estimated total expenses of FIRA for supervising these institutions. (For purposes of describing this section, the terms "supervision" or "supervising" refer to all duties of FIRA with respect to each class of institution, including administrative expenses, chartering federal institutions, and rulemaking.) For federally chartered institutions with less than \$10 billion in assets, the assessments may not exceed 20 percent of the aggregate amount collected from all federally chartered institutions.

Section-by-Section Summary

Fees and funding for state chartered institutions

Small State Chartered Institutions -- FIRA may not assess any state chartered bank, thrift, branch or agency, with total assets of less than \$10 billion. The FRB shall transfer to FIRA an amount equal to the total costs of supervising state licensed branches and agencies of foreign banks with assets less than \$10 billion. The FRB shall transfer to FIRA an amount equal to 20 percent of the estimated total expenses of FIRA for supervising state chartered banks and thrifts with less than \$10 billion in assets. The FDIC shall transfer to FIRA an amount equal to 80 percent of the estimated total expenses FIRA incurs for supervising these state banks and thrifts.

Large State Chartered Institutions -- FIRA must assess state institutions with assets of \$10 billion or more an amount equal to 50 percent of the costs associated with their supervision. The FRB shall transfer an amount equal to 50 percent of FIRA's estimated expenses for FIRA's duties relating to these large state chartered institutions.

Fees and funding for holding companies

Small Holding Companies -- FIRA may not assess any bank holding company or savings and loan holding company with less than \$10 billion in assets. The FRB shall transfer an amount equal to FIRA's total estimated expenses for carrying out its duties for these bank holding companies and savings and loan holding companies. These estimated expenses may not include the estimated expenses for supervising the depository institution subsidiaries of these holding companies.

Large Holding Companies -- The assessment of holding companies with total assets of \$10 billion or more must be sufficient to cover the estimated expenses associated with their supervision. Estimated expenses for holding company supervision may not include the estimated expenses for supervising their depository institution subsidiaries.

Fees for specified financial companies that are not bank holding companies -- For other institutions that are subject to FIRA's supervision – i.e., specified financial companies that are not bank holding companies – the aggregate amount of assessments collected by FIRA must cover the total estimated expenses associated with their supervision.

Section 336. Personnel

The Chairperson may fix the number of and appoint and direct all employees of FIRA and may also determine their compensation. Compensation may be determined without regard to the General Schedule pay rates. The Chairperson must report to Congress annually about the structure of compensation and benefits for employees.

Section 337. Contracting and Leasing Authority

The Chairperson has the authority to enter into and perform contracts and to hold, lease, maintain, or sell property.

Section-by-Section Summary

Subtitle D – Additional FIRA Authority for Specified Financial Companies

Section 341. Examinations of Companies that do not Control Banks

FIRA may examine specified U.S. nonbank financial companies and any subsidiaries of such companies and any U.S. subsidiary, branch, or agency of a specified foreign nonbank financial company to determine the nature of the operations and financial condition of the company and its subsidiaries; the financial, operational, and other risks within the company that may pose a threat to the safety and soundness of the company or the stability of the U.S. financial system; the systems for monitoring and controlling such risks; and compliance with the prudential standards the Agency for Financial Stability promulgates and any other federal law that FIRA has jurisdiction to enforce against these companies.

To the extent possible, FIRA shall rely on reports of examination of functionally regulated subsidiaries made by their primary regulator.

FIRA shall require periodic public disclosures to support market evaluation of the risk profile, capital adequacy, and risk management capabilities of specified financial companies.

Section 342. Enforcement

Specified U.S. nonbank financial companies and specified foreign nonbank financial companies will be subject to the enforcement provisions under section 8 of the Federal Deposit Insurance Act.

If FIRA determines that a functionally regulated subsidiary of one of these companies does not comply with the regulations of the Agency for Financial Stability or otherwise poses a threat to the financial stability of the U.S., FIRA may recommend in writing to the primary financial regulatory agency for the subsidiary that the agency initiate a supervisory action or an enforcement proceeding. If the agency does not initiate an action within 30 days, FIRA shall report this failure to the Agency for Financial Stability.

Section 343. Acquisitions

A specified financial company shall be treated as a bank holding company for purposes of section 3 of the Bank Holding Company Act which governs acquisitions. A specified financial company shall not acquire direct or indirect ownership or control of any voting shares of a company engaged in nonbanking activities having total consolidated assets of \$10 billion or more without providing advanced written notice to FIRA.

In addition to other criteria under the Bank Holding Company Act for reviewing acquisitions, FIRA shall consider the extent to which a proposed acquisition would result in greater or more concentrated risks to global or U.S. financial stability of the global or U.S. economy. FIRA must deny any acquisition for which notice is submitted unless the specified company is well capitalized and well managed both before and after the acquisition.

Section 344. Prohibition Against Management Interlocks Between Certain Financial Holding Companies

A specified financial company shall be treated as a bank holding company for purposes of the Depository Institutions Management Interlocks Act. A management official of a specified financial

Section-by-Section Summary

company may not serve as a management official of any other nonaffiliated specified financial company.

Section 351. Interim Use of Funds, Personnel, and Property

The Chairperson of FIRA is given interim authority beginning on the date of the Chairperson's appointment and until the transfer date to, in general, facilitate an orderly transfer of functions to FIRA. During this time period, the Chairperson may request funding from the OCC, the OTS, the FRB, and the FDIC.

Section 352. Transfer of Employees

All employees of the OCC and OTS are transferred to FIRA. The Chairperson in consultation with the FRB and FDIC shall determine the number and type of employees necessary to carry out the duties transferred to FIRA from these agencies. The FRB and FDIC must transfer to FIRA the employees the Chairperson determines necessary.

Employees are transferred within 90 days of the transfer date. Their status and tenure are protected upon transfer to FIRA. Employees are further protected from involuntary separation, reassignment outside their locality pay area, and downgrade in salary for 2 years after the transfer date, with certain exceptions. This section provides for continuation of employee benefits. Not later than 2 years from the transfer date, the Chairperson must implement a uniform pay and classification system for transferred employees.

Section 353. Property Transferred

The OCC and OTS must transfer all property not later than 90 days after the transfer date. Within 90 days of the transfer date, the FRB and FDIC must transfer all property the Chairperson of FIRA determines, in consultation with the FRB and FDIC, was used to support the functions at those agencies transferred to FIRA.

Section 354. Funds Transferred

Except to the extent necessary to dispose of the affairs of the OCC and OTS, all funds available to those agencies must be transferred on the transfer date.

Section 355. Disposition of Affairs

During the 90 day period beginning on the transfer date, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the FRB, and the Board of Directors of the FDIC, shall manage employees and property and take such actions as necessary to wind up the affairs relating to any function transferred to FIRA.

Section 356. Continuation of Services

Any agency, department or instrumentality of the U.S. that was providing support services to the OCC, OTS, FRB, or the FDIC, in connection with functions transferred, shall continue to provide such services until the transfer of functions is complete and consult with the Chairperson of FIRA to coordinate and facilitate a prompt and orderly transition.

Section-by-Section Summary

Subtitle F – Termination of Federal Thrift Charter

Section 361. Termination of Federal Savings Associations

Upon the date of enactment of this Act, the Director of the OTS may not issue a charter for a federal savings association.

Section 362. Branching

A thrift that converts to a bank may continue to operate its branches.

Subtitle G – Additional Powers of the Corporation

Section 371. Deposit Insurance Reform

Amends the Federal Deposit Insurance Act to repeal the provision that states no institution may be denied the lowest-risk category solely because of its size. This section also provides that an assessment of an insured depository institution shall be an amount equal to the product of an assessment rate established by the FDIC and the amount of the average total assets of the insured depository institution during the assessment period, minus the amount of the average tangible equity of the insured depository institution during the assessment period.

Section 372. Management of the Federal Deposit Insurance Corporation

This section replaces the Comptroller of the Currency's seat on the FDIC Board of Directors with the Chairman of the FRB, and the Director of the OTS' board membership with the Chairperson of FIRA.

Section-by-Section Summary

Title IV—Regulation of Advisers to Hedge Funds and Others

Section 401. Short Title

“Private Fund Investment Advisers Registration Act of 2009”.

Section 402. Definitions

Section 403. Elimination of Private Adviser Exemption; Limited Exemption for Foreign Private Advisers; Limited Intrastate Exemption

Section 404. Collection of Systemic Risk Data; Reports; Examinations; Disclosures

Advisors to private funds must maintain and file specific systemic risk data which the Commission shall periodically examine and share with other regulators.

Section 405. Disclosure Provision Eliminated

Eliminates the provision of the Advisor’s Act that prohibits the Commission from seeking information from Advisors about their clients.

Section 406. Clarification of Rulemaking Authority

Section 407. Exemptions of venture capital fund advisers

No investment adviser shall be subject to the registration requirements of this title with respect to the provision of investment advice relating to a venture capital fund.

Section 408. Exemption of and record keeping by private equity fund advisers

The Commission shall require certain private equity fund advisers to maintain such records and provide to the Commission such annual or other reports as the Commission determines necessary and appropriate in the public interest and for the protection of investors.

Section 409. Family offices

Adds family offices to the list of entities not to be regulated as Investment Advisers as defined by the Investment Advisor’s Act.

Section 410. State and Federal responsibilities; asset threshold for Federal registration of investment advisers

Increases the threshold above which Investment Advisers must register with the Commission to \$100,000,000.

Section 411. Custody of client assets

Requires the Commission to write rules for Investment Advisers to use an independent custodian to hold client assets, where appropriate.

Section 412. Adjusting the accredited investor standard for inflation

Requires the Commission to increase the accredited investor definition and to adjust that definition for inflation at least once every five years.

Section-by-Section Summary

Section 413. Studies and reports

The GAO shall submit separate reports on (1) Accredited investor criteria; (2) A hedge fund SRO; and (3) Short selling.

Section 414. Transition period

Section-by-Section Summary

Title V – Insurance

Subtitle A – Office of National Insurance

Section 501. Short Title

Section 502. Establishment of Office of National Insurance

This section establishes the Office of National Insurance (“Office”) within the Department of the Treasury. The Office, to be headed by a career Senior Executive Service Director appointed by the Secretary of the Treasury (“Secretary”), will have the authority to: (1) monitor all aspects of the insurance industry; (2) recommend to the Agency for Financial Stability (“Agency”) that the Agency designate an insurer, including its affiliates, as an entity subject to regulation as a specified financial company as defined in Title I of the Restoring American Financial Stability Act; (3) assist the Secretary in administering the Terrorism Risk Insurance Program; (4) coordinate Federal efforts and establish Federal policy on prudential aspects of international insurance matters; (5) determine whether State insurance measures are preempted by International Insurance Agreements on Prudential Measures; and (6) consult with the States regarding insurance matters of national importance and prudential insurance matters of international importance. The authority of the Office extends to all lines of insurance except health insurance.

In carrying out its functions, the Office may collect data and information on the insurance industry and insurers, as well as issue reports. It may require an insurer or an affiliate to submit data or information reasonably required to carry out functions of the Office, although the Office may establish an exception to data submission requirements for insurers meeting a minimum size threshold. Before collecting any data or information directly from an insurer, the Office must first coordinate with each relevant State insurance regulator (or other relevant Federal or State regulatory agency, in the case of an affiliate) to determine whether the information is available from such State insurance regulator or other regulatory agency. The Office will have power to require by subpoena that an insurer produce the data or information requested, but only upon a written finding by the Director that the data or information is required to carry out its functions and that it has coordinated with relevant regulator or agency as required. Any non-publicly available data and information submitted to the Office will be subject to confidentiality provisions: privileges are not waived; any requirements regarding privacy or confidentiality will continue to apply; and information contained in examination reports will be considered subject to the exemption under the Freedom of Information Act for this type of information.

The Director will determine whether a State insurance measure is preempted because it: (a) results in less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction that is subject to an International Insurance Agreement on Prudential Measures than a United States insurer domiciled, licensed, or otherwise admitted in that State and (b) is inconsistent with an International Insurance Agreement on Prudential Measures. However, nothing in this section preempts any State insurance measure that governs any insurer’s rates, premiums, underwriting or sales practices, State coverage requirements for insurance, application of State antitrust laws to the business of insurance, or any State insurance measure governing the capital or solvency of an insurer (except to the extent such measure results in less favorable treatment of a non-United States insurer than a United States insurer).

Section-by-Section Summary

An “International Insurance Agreement on Prudential Measures” is defined as a written bilateral or multilateral agreement entered into between the United States and a foreign government, authority, or regulatory entity regarding prudential measures applicable to the business of insurance or reinsurance. Before making a determination of inconsistency, the Director will notify and consult with the appropriate State, publish a notice in the Federal Register, and give interested parties the opportunity to submit comments. Upon making the determination, the Director will notify the appropriate State and Congress, and establish a reasonable period of time before the preemption will become effective. At the conclusion of that period, if the basis for the determination still exists, the Director will publish a notice in the Federal Register that the preemption has become effective and notify the appropriate State.

The Director will consult with State insurance regulators, to the extent the Director determines appropriate, in carrying out the functions of the Office. Nothing in this section will be construed to give the Office or the Treasury Department general supervisory or regulatory authority over the business of insurance.

The Director must submit a report to the President and to Congress by September 30th of each year on the insurance industry and any actions taken by the Office regarding preemption of inconsistent State insurance measures.

The Director must also conduct a study and submit a report to Congress within 18 months of the enactment of this section on how to modernize and improve the system of insurance regulation in the United States. The study and report must be guided by the following six considerations: (1) systemic risk regulation with respect to insurance; (2) capital standards and the relationship between capital allocation and liabilities; (3) consumer protection for insurance products and practices; (4) degree of national uniformity of state insurance regulation; (5) regulation of insurance companies and affiliates on a consolidated basis; and (6) international coordination of insurance regulation. The study and report must also examine additional factors as set forth in this section.

This section also authorizes the Secretary of the Treasury to negotiate and enter into International Insurance Agreements on Prudential Measures on behalf of the United States. However, nothing in this section will be construed to affect the development and coordination of the United States international trade policy or the administration of the United States trade agreements program. The Secretary will consult with the United State Trade Representative on the negotiation of International Insurance Agreements on Prudential Measures, including prior to initiating and concluding any such agreements.

Subtitle B. State-Based Insurance Reform

Section 511. Short Title. This subtitle may be cited as the “Nonadmitted and Reinsurance Reform Act of 2009”.

Section 512. Effective Date

Section-by-Section Summary

Part I – Nonadmitted Insurance

Sec. 521. Reporting, Payment, and Allocation of Premium Taxes

Gives the home State of the insured (policyholder) sole regulatory authority over the collection and allocation of premium tax obligations related to nonadmitted insurance (also known as surplus lines insurance). States are authorized to enter into a compact or other agreement to establish uniform allocation and remittance procedures. Insured's home State may require surplus lines brokers and insureds to file tax allocation reports detailing portion of premiums attributable to properties, risks, or exposures located in each state.

Sec. 522. Regulation of Nonadmitted Insurance by Insured's Home State

Unless otherwise provided, insured's home State has sole regulatory authority over nonadmitted insurance, including broker licensing.

Sec. 523. Participation in National Producer Database

State may not collect fees relating to licensing of nonadmitted brokers unless the State participates in the national insurance producer database of the National Association of Insurance Commissioners (NAIC) within 2 years of enactment of this subtitle.

Sec. 524. Uniform Standards For Surplus Lines Eligibility

Streamlines eligibility requirements for nonadmitted insurance providers with the eligibility requirements set forth in the NAIC's Nonadmitted Insurance Model Act.

Sec. 525. Streamlined Application for Commercial Purchasers

Allows exempt commercial purchasers, as defined in section 527, easier access to the non-admitted marketplace by waiving certain requirements.

Sec. 526. GAO Study of Nonadmitted Insurance Market

The Comptroller General shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this part on the size and market share of the nonadmitted market. The Comptroller General shall consult with the NAIC and produce this report within 30 months after the effective date.

Sec. 527. Definitions

Among others, defines Exempt Commercial Purchasers and details the qualifications necessary to qualify as such for the purposes of section 525.

Part II – Reinsurance

Sec. 531. Regulation of Credit for Reinsurance and Reinsurance Agreements

Prohibits non-domiciliary States from denying credit for reinsurance if the State of domicile of a ceding insurer is an NAIC-accredited State or has solvency requirements substantially similar to those required for NAIC accreditation. Prohibits non-domiciliary States from restricting or eliminating the rights of reinsurers to resolve disputes pursuant to contractual arbitration clauses, prohibits non-domiciliary States from ignoring or eliminating contractual agreements on choice of law determinations,

Section-by-Section Summary

and prohibits non-domiciliary States from enforcing reinsurance contracts on terms different from those set forth in the reinsurance contract.

Sec. 532. Solvency Regulation

State of domicile of the reinsurer is solely responsible for regulating the financial solvency of the reinsurer. Non-domiciliary States may not require reinsurer to provide any additional financial information other than the information required by State of domicile. Non-domiciliary States are required to be provided with copies of the financial information that is required to be filed with the State of domicile.

Sec. 533. Definitions

Among others, defines a reinsurer and clarifies how a insurer could be determined as a reinsurer under the laws of the state of domicile.

Part III – Rule of Construction

Sec. 541. Rule of Construction

Clarifies that this subtitle will not modify, impair, or supersede the application of antitrust laws, confirms that any potential conflict between this subtitle and the antitrust laws will be resolved in favor of the operation of the antitrust laws.

Sec. 542. Severability

States that if any section, subsection, or application of this subtitle is held to be unconstitutional, the remainder of the subtitle shall not be affected.

Section-by-Section Summary

Title VI – Bank and Savings Association Holding Company and Depository Institution Regulatory Improvements Act of 2009

Section 601. Short Title

Section 602. Definitions

This section defines key terms such as “commercial firm.”

Section 603. Moratorium and Study on Treatment of Credit Card Banks, Industrial Loan Companies, Trust Banks and Certain Other Companies as Bank Holding Companies under the Bank Holding Company Act

This section prohibits the Federal Deposit Insurance Corporation from approving a new application for deposit insurance for an industrial loan company, credit card bank, or trust bank that is owned or controlled by a commercial firm, until three years from the date of enactment of this Act. In addition, within 18 months of enactment of this Act, the Comptroller General must submit a report to Congress analyzing whether it is necessary to eliminate the exceptions in the Bank Holding Company Act of 1956 for credit card banks, industrial loan companies, trust banks, thrifts, and certain other companies, in order to strengthen the safety and soundness of these institutions or the stability of the financial system.

Section 604. Reports and Examinations of Bank Holding Companies; Regulation of Functionally Regulated Subsidiaries

This section removes constraints on the ability of FIRA to obtain reports from, examine and regulate subsidiaries of bank holding companies. In addition, when reviewing proposed acquisitions and mergers of banks, bank holding company proposals to engage in nonbank activities or financial holding company proposals to engage in activities that are financial in nature, FIRA must consider the effect of any such proposal on the stability of the United States banking or financial system. A financial holding company also may not engage in certain activities that are financial in nature without the approval of FIRA if they involve the acquisition of assets that exceed \$25 billion.

Section 605. Requirements for Financial Holding Companies to Remain Well Capitalized and Well Managed

This section amends the Bank Holding Company Act of 1956 to require all financial holding companies engaging in expanded financial activities to remain well capitalized and well managed.

Section 606. Standards for Interstate Acquisitions and Mergers

This section raises the capital and management standards for bank holding companies engaging in interstate bank acquisitions by requiring them to be well capitalized and well managed. In addition, interstate mergers of banks will only be permitted if the resulting bank is well capitalized and well managed.

Section-by-Section Summary

Section 607. Enhancing Existing Restrictions on Bank Transactions with Affiliates

This section amends section 23A of the Federal Reserve Act by, among other things, defining an investment fund for which the member bank is an investment adviser as an affiliate of the member bank and adding derivative transaction credit exposure to the list of covered transactions.

Section 608. Eliminating Exceptions for Transactions with Financial Subsidiaries

This section amends section 23A of the Federal Reserve Act by eliminating the special treatment for transactions with financial subsidiaries.

Section 609. Lending Limits Applicable to Credit Exposure on Derivative Transactions, Repurchase Agreements, Reverse Repurchase Agreements, and Securities Lending and Borrowing Transactions

This section tightens national bank lending limits by treating credit exposures on derivatives, repurchase agreements, and reverse repurchase agreements as extensions of credit for the purposes of national bank lending limits.

Section 610. Application of National Bank Lending Limits to Insured State Banks

This section requires all insured depository institutions to comply with national bank lending limits.

Section 611. Restriction on Conversions of Troubled Banks and Savings Associations

This section prohibits conversions from a state bank charter to a national banking charter or vice versa during any time in which a bank is subject to a cease and desist order, memorandum of understanding or other enforcement action. It also prohibits the conversion of a federal savings association to a national or state bank or state savings association under these circumstances.

Section 612. De Novo Branching into States

This section expands the ability of a national bank or state bank to establish a de novo branch in another state.

Section 613. Lending Limits to Insiders

This section expands the type of transactions subject to insider lending limits to include derivatives transactions, repurchase agreements, reverse repurchase agreements, and securities lending or borrowing transactions.

Section 614. Limitations on Purchases of Assets from Insiders

This section prohibits insured depository institutions from entering into asset purchase or sales transactions with its executive officers, directors, or principal shareholders or a related interest unless the transaction is on market terms and, if the transaction represents more than ten percent of the capital and surplus of the institution, has been approved in advance by a majority of the disinterested members of the board.

Section 615. Rules Regarding Capital Levels of Holding Companies

This section clarifies that FIRA may adopt rules governing the capital levels of bank and savings and loan holding companies. FIRA may also require a commercial firm that owns or controls more than one insured depository institution to establish an intermediate holding company that is solely engaged in financial activities to hold the insured depository institutions in order to provide for enhanced

Section-by-Section Summary

supervision of the insured depository institutions. In addition, FIRA may require any company that owns or controls an insured depository institution to serve as a source of financial strength for such institution.

Section 616. Elimination of Elective Investment Bank Holding Company Framework

This section eliminates the elective Investment Bank Holding Company Framework in the Securities Exchange Act of 1934.

Section-by-Section Summary

Title VII—Over-the-Counter Derivatives Markets Act of 2009

Section 701. Short Title

Section 701. Findings and Purposes

This section describes the findings and purposes of the Over-the-Counter Derivatives Markets Act of 2009. In order to mitigate costs and risks to taxpayers and the financial system, this Act establishes regulations for the over-the-counter derivatives market including requirements for clearing, exchange trading, capital, margin, and reporting.

Subtitle A — Regulation of Swap Markets

Section 711. Definitions

This section adds new definitions to the Commodity Exchange Act and directs the Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) to jointly adopt uniform interpretations. The defined terms include “swap,” “swap dealer,” “swap repository,” and “major swap participant.”

This section also establishes guidelines for joint CFTC and SEC rulemaking authority under this Act. This section requires that rules and regulations prescribed jointly under this Act by the CFTC and SEC shall be uniform and shall treat functionally or economically equivalent products similarly. This section authorizes the CFTC and SEC to prescribe rules defining “swap” and “security-based swap” to prevent evasions of this Act. This section also requires the CFTC and SEC to prescribe joint rules in a timely manner and authorizes the Agency for Financial Stability to prescribe rules if the CFTC and SEC fail to meet the statutory deadlines.

Section 712. Jurisdiction

This section removes limitations on the CFTC’s jurisdiction with respect to certain derivatives transactions, including swap transactions between “eligible contract participants.”

Section 713. Clearing

Subsection (a). Clearing Requirement

This subsection requires clearing of all swaps that are accepted for clearing by a registered derivatives clearing organization unless one of the parties to the swap qualifies for an exemption. This subsection requires cleared swaps that are accepted for trading to be executed on a designated contract market or on a registered alternative swap execution facility. The CFTC may exempt a party to a swap from the clearing and exchange trading requirement if one of the counterparties to the swap is not a swap dealer or major swap participant and does not meet the eligibility requirements of any derivatives clearing organization that clears the swap. The CFTC must notify the Agency for Financial Stability before issuing an exemption. Requires a party to a swap to submit the swap for clearing if a counterparty requests that the such swap be cleared and the swap is accepted for clearing by a registered derivatives clearing organization.

Section-by-Section Summary

This subsection requires derivatives clearing organizations to seek approval from the CFTC prior to clearing any group or category of swaps and directs the CFTC and SEC to jointly adopt rules to further identify any group or category of swaps acceptable for clearing based on specified criteria; authorizes the CFTC and SEC jointly to prescribe rules or issue interpretations as necessary to prevent evasions of section 2(j) of the Commodity Exchange Act; and requires parties who enter into non-standardized swaps to report such transactions to a swap repository or the CFTC.

Subsection (b). Derivatives Clearing Organizations

This subsection requires derivatives clearing organizations that clear swaps to register with the CFTC, and directs the CFTC and SEC (in consultation with the appropriate federal banking agencies) to jointly adopt uniform rules governing entities registered as derivatives clearing organizations for swaps under this subsection and entities registered as clearing agencies for security-based swaps under the Securities Exchange Act of 1934 (“Exchange Act”). This subsection also permits dual registration of a derivatives clearing organization with the CFTC and SEC or appropriate banking agency, and authorizes the CFTC to exempt from registration under this subsection a derivatives clearing organization that is subject to comparable, comprehensive supervision and regulation on a consolidated basis by another regulator. This subsection specifies core regulatory principles for derivatives clearing organizations, including standards for minimum financial resources, participant and product eligibility, risk management, settlement procedures, safety of member or participant funds and assets, rules and procedures for defaults, rule enforcement, system safeguards, reporting, recordkeeping, disclosure, information sharing, antitrust considerations, governance arrangements, conflict of interest mitigation, board composition, and legal risk. This subsection also requires a derivatives clearing organization to provide the CFTC with all information necessary for the CFTC to perform its responsibilities.

Subsection (c). Legal Certainty for Identified Banking Products

This subsection clarifies that the Federal banking agencies, rather than the CFTC or SEC, retain regulatory authority with respect to identified banking products, unless a Federal banking agency, in consultation with the CFTC and SEC, determines that a product has been structured as an identified banking product for the purpose of evading the provisions of the Commodity Exchange Act, Securities Act of 1933, or Exchange Act.

Section 714. Public Reporting of Aggregate Swap Data

This section directs the CFTC (or a derivatives clearing organization or swap repository designated by the CFTC) to make available to the public, in a manner that does not disclose the business transactions or market positions of any person, aggregate data on swap trading volumes and positions.

Section 715. Swap Repositories

This section describes the duties of a swap repository as accepting, maintaining, and making available swap data as prescribed by the CFTC; makes registration with the CFTC voluntary for swap repositories; and subjects registered swap repositories to CFTC inspection and examination. This section also directs the CFTC and SEC to jointly adopt uniform rules governing entities that register with the CFTC as swap repositories and entities that register with the SEC as security-based swap repositories, and authorizes the CFTC to exempt from registration any swap repository subject to comparable, comprehensive supervision or regulation by another regulator.

Section-by-Section Summary

Section 716. Reporting and Recordkeeping

This section requires reporting and recordkeeping by any person who enters into a swap that is not cleared through a registered derivatives clearing organization or reported to a swap repository.

Section 717. Registration and Regulation of Swap Dealers and Major Swap Participants

This section requires swap dealers and major swap participants to register with the CFTC, and directs the CFTC and SEC to jointly prescribe uniform rules for entities that register with the CFTC as swap dealers or major swap participants and entities that register with the SEC as security-based swap dealers or major security-based swap participants. This section also requires a registered swap dealer or major swap participant to (1) meet such minimum capital and margin requirements as the FIRA (for banks) or CFTC and SEC (for nonbanks) shall jointly prescribe; (2) meet reporting and recordkeeping requirements; (3) conform with business conduct standards; (4) conform with documentation and back office standards; and (5) comply with requirements relating to position limits, disclosure, conflicts of interest, and antitrust considerations. The Commission may exempt swap dealers and major swap participants from the margin requirement according to certain criteria and pursuant to notification process with the Agency for Financial Stability. If a swap dealer or major swap participant is exempt from the mandatory margin requirement a counterparty has the right to require that margin be posted. Regulators may permit the use of non-cash collateral to meet margin requirements.

Section 718. Segregation of Assets Held as Collateral in Swap Transactions

For cleared swaps, this section requires that swap dealers, futures commission merchants, and derivatives clearing organizations segregate funds held to margin, guarantee, or secure the obligations of a counterparty under a cleared swap in a manner that protects their property. In addition, counterparties to an un-cleared swap will be able to request that any margin posted in the transaction be held by an independent third party custodian.

Section 719. Conflicts of Interest

This section also directs the CFTC to require futures commission merchants and introducing brokers to implement conflict-of-interest systems and procedures relating to research activities and trading.

Section 720. Alternative Swap Execution Facilities

This section requires a facility for the trading of swaps to register with the CFTC as an alternative swap execution facility ("ASEF"), subject to certain criteria relating to deterrence of abuses, trading procedures, and financial integrity of transactions. This section also establishes core regulatory principles for ASEFs relating to enforcement, anti-manipulation, monitoring, information collection and disclosure, position limits, emergency powers, recordkeeping and reporting, antitrust considerations, and conflicts of interest. This section directs the CFTC and SEC to jointly prescribe rules governing the regulation of alternative swap execution facilities, and authorizes the CFTC to exempt from registration under this section an alternative swap execution facility that is subject to comparable, comprehensive supervision and regulation by another regulator.

Section 721. Derivatives Transaction Execution Facilities and Exempt Boards of Trade

This section repeals the existing provisions of the Commodity Exchange Act relating to derivatives transaction execution facilities and exempt boards of trade.

Section-by-Section Summary

Section 722. Designated Contract Markets

This section requires a board of trade, in order to maintain designation as a contract market, to demonstrate that it provides a competitive, open, and efficient market for trading; has adequate financial, operational, and managerial resources; and has established robust system safeguards to help ensure resiliency.

Section 723. Margin

This section authorizes the CFTC to set margin levels for registered entities.

Section 724. Position Limits

This section authorizes the CFTC to establish aggregate position limits across commodity contracts listed by designated contract markets, commodity contracts traded on a foreign board of trade that provides participants located in the United States with direct access to its electronic trading and order matching system, and swap contracts that perform or affect a significant price discovery function with respect to regulated markets.

Section 725. Enhanced Authority over Registered Entities

This section enhances the CFTC's authority to establish mechanisms for complying with regulatory principles and to review and approve new contracts and rules for registered entities.

Section 726. Foreign Boards of Trade

This section authorizes the CFTC to adopt rules and regulations requiring registration by, and prescribing registration requirements and procedures for, a foreign board of trade that provides members or other participants located in the United States direct access to the foreign board of trade's electronic trading and order matching system. This section also prohibits foreign boards of trade from providing members or other participants located in the United States with direct access to the electronic trading and order matching systems of the foreign board of trade with respect to a contract that settles against the price of a contract listed for trading on a CFTC-registered entity unless the foreign board of trade meets, in the CFTC's determination, certain standards of comparability to the requirements applicable to U.S. boards of trade. This section also provides legal certainty for certain contracts traded on or through a foreign board of trade.

Section 727. Legal Certainty for Swaps

This section clarifies that no hybrid instrument sold to any investor and no transaction between eligible contract participants shall be void based solely on the failure of the instrument or transaction to comply with statutory or regulatory terms, conditions, or definitions.

Section 728. FDICIA Amendments

Makes conforming amendments to the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") to reflect that the definition of "over-the-counter derivative instrument" under FDICIA no longer includes swaps or security-based swaps.

Section-by-Section Summary

Section 729. Primary Enforcement Authority

This section clarifies that the CFTC shall have primary enforcement authority for all provisions of Subtitle A of this Act, other than new Section 4s(e) of the Commodity Exchange Act (as added by Section 717 of this Act, relating to capital and margin requirements for swap dealers and major swap participants), for which the FIRA shall have exclusive enforcement authority with respect to banks and branches or agencies of foreign banks that are swap dealers or major swap participants. This section also provides the FIRA with backstop enforcement authority with respect to the nonprudential requirements of the new Section 4s of the Commodity Exchange Act (relating to registration and regulation of swap dealers and major swap participants) if the CFTC does not initiate an enforcement proceeding within 90 days of a written recommendation by the FIRA.

Section 730. Enforcement

This section clarifies the enforcement authority of the CFTC with respect to swaps and swap repositories, and of the FIRA with respect to swaps, swap dealers, major swap participants, swap repositories, alternative swap execution facilities, and derivatives clearing organizations.

Section 731. Retail Commodity Transactions

This section clarifies CFTC jurisdiction with respect to certain retail commodity transactions.

Section 732. Large Swap Trader Reporting

This section requires reporting and recordkeeping with respect to large swap positions in the regulated markets.

Section 733. Other Authority

This section clarifies that this title, unless otherwise provided by its terms, does not divest any appropriate federal banking agency, the CFTC, the SEC, or other federal or state agency of any authority derived from any other applicable law.

Section 734. Antitrust

This section clarifies that nothing in this title shall be construed to modify, impair, or supersede antitrust law.

Subtitle B — Regulation of Security-Based Swap Markets

Section 751. Definitions Under the Securities Exchange Act of 1934

This section adds new definitions to the Securities Exchange Act of 1934 and directs the Commodity Futures Trading Commission (“CFTC”) and Securities and Exchange Commission (“SEC”) to jointly adopt uniform interpretations. The defined terms include “security-based swap,” “security-based swap dealer,” “security-based swap repository,” “mixed swap,” and “major security-based swap participant.”

Section-by-Section Summary

This section also establishes guidelines for joint CFTC and SEC rulemaking authority under this Act. This section requires that rules and regulations prescribed jointly under this Act by the CFTC and SEC shall be uniform and shall treat functionally or economically equivalent products similarly. This section authorizes the CFTC and SEC to prescribe rules defining “swap” and “security-based swap” to prevent evasions of this Act. This section also requires the CFTC and SEC to prescribe joint rules in a timely manner and authorizes the Agency for Financial Stability to prescribe rules if the CFTC and SEC fail to meet the statutory deadlines.

Section 752. Repeal of Prohibition on Regulation of Security-Based Swaps

This section repeals provisions enacted as part of the Gramm-Leach-Bliley Act and the Commodity Futures Modernization Act that prohibit the SEC from regulating security-based swaps.

Section 753. Amendments to the Securities Exchange Act of 1934

Subsection (a). Clearing for Security-Based Swaps

This subsection requires clearing of all security-based swaps that are accepted for clearing by a registered clearing agency unless one of the parties to the swap qualifies for an exemption. This subsection requires cleared security-based swaps that are accepted for trading to be executed on a registered national securities exchange or on a registered alternative swap execution facility. The SEC may exempt a security-based swap from the clearing and exchange trading requirement if one of the counterparties to the swap is not a security-based swap dealer or major swap participant and does not meet the eligibility requirements of any clearing agency that clears the swap. The SEC must notify the Agency for Financial Stability before issuing an exemption. Requires a party to a security-based swap to submit the swap for clearing if a counterparty requests that the swap be cleared and the swap is accepted for clearing by a registered clearing agency.

This subsection requires clearing agencies to seek approval from the SEC prior to clearing any group or category of security-based swaps and directs the CFTC and SEC to jointly adopt rules to further identify any group or category of security-based swaps acceptable for clearing based on specified criteria; authorizes the CFTC and SEC jointly to prescribe rules or issue interpretations as necessary to prevent evasions of section 3A of the Exchange Act; requires parties who enter into non-standardized swaps to report such transactions to a swap repository or the CFTC; and directs the SEC and CFTC to jointly adopt uniform rules governing entities registered with the CFTC as derivatives clearing organizations for swaps and with the SEC as clearing agencies for security-based swaps.

Subsection (b). Alternative Swap Execution Facilities

This subsection requires facilities for the trading of security-based swaps to register with the SEC as ASEFs, subject to certain criteria relating to deterrence of abuses, trading procedures, and financial integrity of transactions. This subsection also establishes core regulatory principles for ASEFs relating to enforcement, anti-manipulation, monitoring, information collection and disclosure, position limits, emergency powers, recordkeeping and reporting, antitrust considerations, and conflicts of interest. This subsection directs the SEC and CFTC to jointly prescribe rules governing the regulation of alternative swap execution facilities, and authorizes the SEC to exempt from registration under this subsection an alternative swap execution facility that is subject to comparable, comprehensive supervision and regulation by another regulator.

Section-by-Section Summary

Subsection (c). Trading in Security-Based Swap Agreements

This subsection prohibits parties who are not eligible contract participants (as defined in the Commodity Exchange Act) from effecting security-based swap transactions off of a registered national securities exchange.

Subsection (d). Registration and Regulation of Swap Dealers and Major Swap Participants

This subsection requires security-based swap dealers and major security-based swap participants to register with the SEC, and directs the SEC and CFTC to jointly prescribe uniform rules for entities that register with the SEC as security-based swap dealers or major security-based swap participants and entities that register with the CFTC as swap dealers or major swap participants. This subsection also requires security-based swap dealers and major security-based swap participants to (1) meet such minimum capital and margin requirements as the FIRA (for banks) or CFTC and SEC (for nonbanks) shall jointly prescribe; (2) meet reporting and recordkeeping requirements; (3) conform with business conduct standards; (4) conform with documentation and back office standards; and (5) comply with requirements relating to position limits, disclosure, conflicts of interest, and antitrust considerations. The Commission may exempt security-based swap dealers and major swap participants from the margin requirement according to certain criteria and pursuant to notification process with the Agency for Financial Stability. If a security-based swap dealer or major swap participant is exempt from the mandatory margin requirement a counterparty has the right to require that margin be posted. Regulators may permit the use of non-cash collateral to meet margin requirements.

Subsection (e). Additions of Security-Based Swaps to Certain Enforcement Provisions

This subsection adds security-based swaps to the Exchange Act's list of financial instruments that a person may not use to manipulate security prices.

Subsection (f). Rulemaking Authority to Prevent Fraud, Manipulation, and Deceptive Conduct in Security-Based Swaps

This subsection prohibits fraudulent, manipulative, and deceptive acts involving security-based swaps and security-based swap agreements, and directs the SEC to prescribe rules and regulations to define and prevent such conduct.

Subsection (g). Position Limits and Position Accountability for Security-Based Swaps and Large Trader Reporting

As a means to prevent fraud and manipulation, this subsection authorizes the SEC to (1) establish limits on the aggregate number or amount of positions that any person or persons may hold across securities listed on a registered national securities exchange and security-based swaps that perform or affect a significant price discovery function with respect to regulated markets; (2) exempt from such limits any person, class of persons, transaction, or class of transactions; and (3) direct a self-regulatory organization to adopt rules relating to position limits for security-based swaps. This subsection also requires reporting and recordkeeping with respect to large security-based swap positions in regulated markets.

Section-by-Section Summary

Subsection (h). Public Reporting and Repositories for Security-Based Swap Agreements

This subsection requires the SEC or its designee to make available to the public, in a manner that does not disclose the business transactions and market positions of any person, aggregate data on security-based swap trading volumes and positions. This subsection also describes the duties of a security-based swap repository as accepting and maintaining security-based swap data as prescribed by the SEC, makes SEC registration for security-based swap repositories voluntary, and subjects registered security-based swap repositories to SEC inspection and examination. This subsection directs the SEC and CFTC to jointly adopt uniform rules governing entities that register with the SEC as security-based swap repositories and entities that register with the CFTC as swap repositories and authorizes the SEC to exempt from registration any security-based swap repository subject to comparable, comprehensive supervision or regulation by another regulator.

Section 754. Segregation of Assets Held as Collateral in Security-Based Swap Transactions

For cleared swaps, this section requires that security-based swap dealers or clearing agencies segregate funds held to margin, guarantee, or secure the obligations of a counterparty in a manner that protects their property. In addition, counterparties to an un-cleared swap will be able to request that any margin posted in the transaction be held by an independent third party custodian.

Section 755. Reporting and Recordkeeping

This section requires reporting and recordkeeping by any person who enters into a security-based swap that is not cleared with a registered clearing agency or reported to a security-based swap repository. This section also includes security-based swaps within the scope of certain reporting requirements under Sections 13 and 16 of the Exchange Act.

Section 756. State Gaming and Bucket Shop Laws

This section clarifies the applicability of certain state laws to security-based swaps.

Section 757. Amendments to the Securities Act of 1933; Treatment of Security-Based Swaps

This section amends the Securities Act of 1933 to include security-based swaps within the definition of “security.” This section also amends Section 5 of the Securities Act of 1933 to prohibit offers to sell or purchase a security-based swap without an effective registration statement to any person other than an eligible contract participant (as defined in the Commodity Exchange Act).

Section 758. Other Authority

This section clarifies that this title, unless otherwise provided by its terms, does not divest any appropriate federal banking agency, the SEC, the CFTC, or other federal or state agency of any authority derived from any other applicable law.

Section 758. Jurisdiction

This section clarifies that the SEC shall not have authority to grant exemptions from the provisions of this Act, except as expressly authorized by this Act; provides the SEC with express authorization to use any authority granted under subsection (a) to exempt any person or transaction from any provision of this title that applies to such person or transaction solely because a security-based swap is a security under section 3(a).

Section-by-Section Summary

Subtitle C — Other Provisions

Section 761. International Harmonization

This section requires regulators to consult and coordinate with international authorities on the establishment of consistent standards for the regulation of swaps and security-based swaps.

Section 762. Interagency Cooperation

This section establishes a SEC-CFTC Joint Advisory Committee to monitor and develop solutions emerging in the swaps and security-based swaps markets, a SEC-CFTC Joint Enforcement Task Force to improve market oversight, a SEC-CFTC-Federal Reserve Trading and Markets Fellowship Program to provide cross-training among agency staff about the interaction between financial markets activity and the real economy, SEC-CFTC cross-agency enforcement training and education, and detailing of staff between the SEC and CFTC.

Section 763. Study and Report on Implementation

This section requires the GAO to conduct on study on the implementation of this Act within one year of the date of enactment.

Section 764. Recommendations for Changes to Insolvency Laws

This section requires the SEC, CFTC, and FIRA to make recommendations to Congress within 180 days of enactment regarding Federal insolvency laws and their impact on various swaps and security-based swaps activity.

Section 765. Effective Date

This section specifies that this title shall become effective 180 days after the date of enactment.

Section-by-Section Summary

Title VIII – Payment, Clearing, and Settlement Supervision Act of 2009

Section 801. Short Title

Section 802. Findings and Purposes

This section describes the findings and purposes of the Payment, Clearing, and Settlement Supervision Act of 2009. In order to mitigate systemic risk in the financial system and promote financial stability, this Act provides the Agency for Financial Stability a role in identifying systemically important financial market utilities and the Board of Governors of the Federal Reserve System (“Board”) with an enhanced role in supervising risk management standards for systemically important financial market utilities and for systemically important payment, clearing, and settlement activities conducted by financial institutions.

Section 803. Definitions

Section 804. Designation of Systemic Importance

This section authorizes the Agency for Financial Stability to designate financial market utilities or payment, clearing, or settlement activities as systemically important, and establishes procedures and criteria for making and rescinding such a designation. Criteria for designation and rescission of designation include the aggregate monetary value of transactions processed and the effect that a failure of a financial market utility or payment, clearing, or settlement activity would have on counterparties and the financial system.

Section 805. Standards for Systemically Important Financial Market Utilities and Payment, Clearing, or Settlement Activities

This section authorizes the Board, in consultation with the Agency for Financial Stability and the appropriate supervisory agencies, to prescribe risk management standards governing the operations of designated financial market utilities and the conduct of designated payment, clearing, and settlement activities by financial institutions. This section also establishes the objectives, principles, and scope of such standards.

Section 806. Operations of Designated Financial Market Utilities

This section authorizes a Federal Reserve bank to establish and maintain an account for a designated financial market utility and allows the Board to modify or provide an exemption from reserve requirements that would otherwise be applicable to the designated financial market utility. This section requires a designated financial market utility to provide advance notice of and obtain approval of material changes to its rules, procedures, or operations.

Section 807. Examination and Enforcement Actions Against Designated Financial Market Utilities

This section requires the supervisory agency to conduct safety and soundness examinations of a designated financial market utility at least annually and authorizes the supervisory agency to take enforcement actions against the utility. This section also allows the Board to participate in examinations by, and make recommendations to, other supervisors and designates the Board as the supervisory agency for designated financial market utilities that do not otherwise have a supervisory agency. The Board is

Section-by-Section Summary

also authorized to take enforcement actions against a designated financial market utility if there is an imminent risk of substantial harm to financial institutions or the broader financial system.

Section 808. Examination and Enforcement Actions Against Financial Institutions Engaged in Designated Activities

This section authorizes the primary financial regulatory agency to examine a financial institution engaged in designated payment, clearing, or settlement activities and to enforce the provisions of this Act and the rules prescribed by the Board against such an institution. This section also requires the Board to collaborate with the primary financial regulatory agency to ensure consistent application of the Board's rules. The Board is granted back-up authority to conduct examinations and take enforcement actions if it has reasonable cause to believe a violation of its rules or of this Act has occurred.

Section 809. Requests for Information, Reports, or Records

This section authorizes the Agency for Financial Stability to collect information from financial market utilities and financial institutions engaged in payment, clearing, or settlement activities in order to assess systemic importance. Upon a designation by the Agency for Financial Stability, the Board may require submission of reports or data by systemically important financial market utilities or financial institutions engaged in activities designated to be systemically important. This section also facilitates sharing of relevant information and coordination among financial regulators, with protections for confidential information.

Section 810. Rulemaking

This section authorizes the Board and the Agency for Financial Stability to prescribe such rules and issue such orders as may be necessary to administer and carry out the purposes of this title and prevent evasions thereof.

Section 811. Other Authority

This section clarifies that this Act, unless otherwise provided by its terms, does not divest any appropriate financial regulatory agency, supervisory agency, or other Federal or State agency of any authority derived from any other applicable law.

Section 812. Effective Date

This section specifies that this Act shall be effective as of the date of enactment.

Section-by-Section Summary

Title IX—Investor Protections and Improvements to the Regulation of Securities

Subtitle A— Increasing Investor Protection

Section 911. Investor Advisory Committee established

There is established within the Commission the Investor Advisory Committee to advise and consult with the Commission on investor issues.

Section 912. Clarification of authority of the Commission to engage in consumer testing

Clarifies the Commission's authority to gather information from and communicate with investors and engage in such temporary programs as the Commission determines are in the public interest for the purpose of evaluating any rule or program of the Commission issued or carried out under any provision of the securities laws.

Section 913. Regulation of brokers, dealers, and investment advisers

Removes the broker-dealer exemption from the Advisors Act and gives the Commission exemptive authority from Advisor prohibition from dealing securities with clients.

Section 914. Office of the Investor Advocate

There is established within the Commission the Office of the Investor Advocate to assist investors in resolving problems with the Commission, identify areas in which investors have encountered significant problems in dealings with the Commission, and other issues.

Section 915. Streamlining of filing procedures for self-regulatory organizations

Make the SEC process for reviewing SRO filings more certain and efficient.

Section 916. Study regarding financial literacy among investors

The Commission shall study and issue a report on the existing level of financial literacy among investors that purchase shares of open-end companies and other related issues.

Section 917. Study regarding mutual fund advertising

The GAO shall conduct a study and issue a report on mutual fund advertising.

Section 918. Clarification of Commission authority to require investor disclosures before purchase of investment company shares

Authorizes the SEC to require broker-dealers to disclose to clients their compensation for transactions of open- and closed-end mutual funds.

Subtitle B— Increasing Regulatory Enforcement and Remedies

Section 921. Authority to issue rules to restrict mandatory predispute arbitration

The Commission shall conduct a rulemaking to prohibit, or impose conditions or limitations on

Section-by-Section Summary

the use of, agreements that require customers or clients of any broker, dealer, or municipal securities dealer to arbitrate any dispute between them.

Section 922. Whistleblower protection

There is established the Investor Protection fund with which the Commission may pay an award to whistleblowers and for other reasons, and there is established that No employer may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower.

Section 923. Conforming amendments for whistleblower protection

Section 924. Implementation and transition provisions for whistleblower protection

The Commission shall issue final regulations implementing the provisions of section 21F of the Securities Exchange Act of 1934, as added by this subtitle, not later than 270 days after the date of enactment of this Act.

Section 925. Collateral bars

Gives the Commission the authority to bar individuals from all securities industries for transgressions in only one of the securities industries.

Section 926. Aiding and abetting authority under the Securities Act and the Investment Company Act

Any person who, by or through stock ownership, agency, or otherwise, or who, pursuant to or in connection with an agreement or understanding with 1 or more other persons by or through stock ownership, agency, or otherwise, controls any person liable under section 11 or 12, shall also be liable jointly and severally with and to the same extent as such controlled person to any person to which such controlled person is liable, unless the controlling person had no knowledge of or reasonable ground to believe in the existence of the facts by reason of which the liability of the controlled person is alleged to exist.

Section 927. Authority to impose penalties for aiding and abetting violations of the Investment Advisers Act

Any person that knowingly or recklessly aids, abets, counsels, commands, induces, or procures another person to commit a violation of certain securities rules shall be deemed to be in violation of such rules to the same extent as the person that committed such violation.

Section 928. Restoring the authority of State regulators over Regulation D offerings

Gives states the authority over Regulation D offerings.

Subtitle C— Improvements to the Regulation of Credit Rating Agencies

Section 931. Findings

Section-by-Section Summary

Section 932. Enhanced regulation of nationally recognized statistical rating organizations

Establishes the Commission Office of Credit Ratings that will conduct an annual examination of each NRSRO, gives the Commission authority to fine or revoke the registration on NRSROs, gives the Commission oversight of NRSRO internal controls and rating methodologies, and other provisions.

Section 933. State of mind in private actions

In cases against NRSROs it is sufficient to prove with a strong inference that the NRSRO knowingly or recklessly failed to conduct a reasonable investigation of the rated security or to obtain reasonable verification of such factual elements from other sources that it considered to be competent and that were independent of the issuer and underwriter.

Section 934. Referring tips to law enforcement or regulatory authorities

Each NRSRO shall refer to the appropriate law enforcement or regulatory authorities any information that the NRSRO receives and finds credible that alleges that an issuer of securities rated by the NRSRO has committed or is committing a violation of law that has not been adjudicated by a Federal or State court.

Section 935. Consideration of information from sources other than the issuer in rating decisions

In producing a credit rating, an NRSRO shall consider information about an issuer that the NRSRO has, or receives from a source other than the issuer, that the NRSRO finds credible and potentially significant to a rating decision.

Section 936. Qualification standards for credit rating analysts

The Commission or other body shall issue rules that ensure that any person employed by an NRSRO to perform credit ratings meets standards of training, experience, and competence necessary to produce accurate ratings; and is tested for knowledge of the credit rating process.

Section 937. Timing of regulations

The Commission shall issue final regulations not later than 1 year after the date of enactment of the Act.

Section 938. Studies and reports

The GAO shall conduct separate studies of: (1) the scope of provisions of Federal, State, and local law that require the use of ratings issued by NRSROs; (2) alternative business models for the credit rating industry; (3) the utility of an independent professional analyst organization for NRSRO rating analysts; (4) how the Commission has carried out the NRSRO provisions of the Act; and (5) a representative sample of the credit ratings issued by each NRSRO to assess the predictive performance of the initial credit ratings in each such sample.

The Commission shall conduct a study of NRSRO independence.

Subtitle D— Improvements to the Asset-Backed Securitization Process

Section 941. Regulation of credit risk retention

The Federal banking agencies and the Commission shall jointly prescribe regulations to require

Section-by-Section Summary

any securitizer to retain an economic interest in a material portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.

Section 942. Periodic and other reporting for asset-backed securities

The Commission shall adopt regulations under this subsection requiring each issuer of an asset-backed security to disclose, for each tranche or class of security, information regarding the assets backing that security.

Section 943. Representations and warranties in asset-backed offerings

The Commission shall prescribe regulations on the use of representations and warranties in the market for asset-backed securities that require each credit rating agency to include in any report accompanying a credit rating a description of the representations, warranties, and enforcement mechanisms available to investors.

Section 944. Exempted transactions under the Securities Act of 1933

Removes the '33 Act exemption on transactions involving offers or sales of one or more promissory notes directly secured by a first lien on a single parcel of real estate upon which is located a dwelling or other residential or commercial structure.

Section 945. Due diligence analysis and disclosure in asset-backed securities issues

The Commission shall issue rules relating to the registration statement required to be filed by any issuer of an asset-backed security that require any issuer of an asset-backed security— to perform a due diligence analysis of the assets underlying the asset-backed security; and to disclose the nature of this analysis.

Subtitle E— Accountability and Executive Compensation

Section 951. Shareholder vote on executive compensation disclosures

Any proxy or consent or authorization for an annual or other meeting of the shareholders for which the proxy solicitation rules of the Commission require compensation disclosure shall include a separate resolution subject to shareholder vote to approve the compensation of executives.

Section 952. Shareholder vote on golden parachute compensation policy

The proxy solicitation material containing golden parachute disclosure shall require a separate shareholder vote to approve the policy.

Section 953. Compensation committee independence

The Commission shall direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that does not comply with independent compensation committee standards.

Section-by-Section Summary

Section 954. Executive compensation disclosures

The Commission shall require each issuer to disclose in the annual proxy statement of the issuer a clear description of any compensation required to be disclosed under the SEC executive compensation forms.

Section 955. Clawback

Each issuer shall develop and implement a policy providing that, in the event that the issuer is required to prepare an accounting restatement due to the material noncompliance of the issuer, the issuer will recover from any current or former executive officer of the issuer any compensation in excess of what would have been paid to the executive officer under the accounting restatement.

Section 956. Disclosure regarding employee hedging

The Commission shall require each issuer to disclose in the annual proxy statement whether the employees of the issuer are permitted to purchase financial instruments that are designed to hedge or offset any decrease in the market value of equity securities granted to employees by the issuer as part of an employee compensation.

Section 957. Excessive compensation by holding companies of depository institutions

FIRA shall establish standards prohibiting as an unsafe and unsound practice any compensation plan of a bank holding company that provides an executive officer, employee, director, or principal shareholder with excessive compensation, fees, or benefits; or could lead to material financial loss to the bank holding company.

Section 958. Higher capital charges

The appropriate Federal banking agency may impose higher capital standards for an insured depository institution with compensation practices that the appropriate Federal banking agency determines pose a risk of harm to the depository institution.

Section 959. Compensation standards for holding companies of depository institutions

The appropriate Federal banking agency shall prohibit the payment by a depository institution holding company of executive compensation that is excessive or could lead to material financial loss to the institution controlled by the depository institution holding company, or to the consolidated depository institution holding company.

Subtitle F— Improvements to the Management of the Securities and Exchange Commission

Section 961. Report and certification of internal supervisory controls

The Commission shall submit a report certified by the Division Directors to the House Financial Services and Senate Banking Committees on the conduct by the Commission of examinations of registered entities, enforcement investigations, and review of corporate financial securities filings.

Section-by-Section Summary

Section 962. Biannual report on personnel management

The GAO shall submit a biannual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the quality of personnel management by the Commission.

Section 963. Annual financial controls audit

The Commission must submit an annual report to Congress that describes the responsibility of the management of the Commission for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and contains an assessment of the effectiveness of the internal control structure and procedures for financial reporting of the Commission during that fiscal year.

Section 964. Report on oversight of national securities associations

Once every three years, the GAO shall submit a report to Congress on the Commission's oversight of the NRSROs.

Section 965. Compliance examiners

The Commission Division of Trading and Markets and Division of Investment Management shall have a staff of examiners to perform compliance inspections and examinations of entities under their jurisdictions.

Section 966. Whistleblower and suggestion program for employees of the Commission

The Commission Inspector General will establish a hotline and a reward program for Commission employees to submit suggested improvements and allegations of waste, fraud, or misconduct.

Subtitle G— Strengthening Corporate Governance

Section 971. Election of Directors by majority vote in uncontested elections

The Commission shall direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer who has on their board members that did not receive a majority vote in uncontested board elections.

Section 972. Proxy access

Gives the Commission the authority to require issuers to allow shareholders to put nominees on the company proxy.

Section 973. Disclosures regarding chairman and CEO structures

The Commission shall issue rules to require an issuer to disclose in the proxy statement the reason that the issuer has chosen the same person to serve as chairman of the board of directors and chief executive officer.

Section-by-Section Summary

Section 974. Shareholder vote on staggered terms of directors

The Commission shall direct the national securities exchanges and the national securities associations to prohibit the listing of any security of an issuer that has a board with staggered terms of service without giving the shareholders a vote on this issue.

Subtitle H— Municipal Securities

Section 975. Regulation of municipal securities and changes to the board of the MSRB

Provides for the regulation of municipal securities dealers and advisors, changes the composition of the MSRB, and other related matters.

Section 976. Government Accountability Office study of increased disclosure to investors

The GAO shall conduct a study and review of the disclosure required to be made by issuers of municipal securities and report on the findings.

Section 977. Government Accountability Office study on transparency of trading in the municipal securities

The GAO shall conduct a study and issue a report on the transparency of trading in the municipal securities market.

Section 978. Study of funding for Government Accounting Standards Board

The Commission shall conduct a study that evaluates the role and importance of the Government Accounting Standards Board in the municipal securities markets; the manner in which the Government Accounting Standards Board is funded, and how such manner of funding affects the financial information available to securities investors; and other related matters.

Subtitle I— Public Company Accounting Oversight Board, Aiding and Abetting, and Other Matters

Section 981. Authority to share certain information with foreign authorities

Certain information that relates to a public accounting firm that a foreign government has empowered a foreign auditor oversight authority to inspect or otherwise enforce laws with respect to, may, at the discretion of the Board, be made available to the foreign auditor oversight authority, under certain conditions.

Section 982. Oversight of brokers and dealers

Gives the PCAOB oversight authority over broker-dealers

Section 983. Portfolio margining

Adds portfolio margining considerations to SIPA.

Section-by-Section Summary

Section 984. Private civil action for aiding and abetting

For purposes of any private civil action any person that knowingly or recklessly provides substantial assistance to another person in violation of the '34 Act shall be deemed to be in violation of this title to the same extent as the person to whom such assistance is provided.

Section 985. Technical corrections to Federal securities laws

Section 986. Conforming amendments relating to the repeal of the Public Utility Holding Company Act of 1935

Section 987. Amendment to definition of material loss and nonmaterial losses to the Deposit Insurance Fund for purposes of Inspector General reviews

Changes the definition of a material loss for the purposes of conducting a material loss review and provides for non-material loss information.

Section 988. Amendment to definition of material loss and nonmaterial losses to the National Credit Union Share Insurance Fund for purposes of Inspector General reviews

Defines a material loss and provides for reports and information for material and non-material losses.

Section 989. Government Accountability Office study on proprietary trading

The GAO shall conduct a study on proprietary trading by financial institutions and the implication of this practice on systemic risk.

Section 989A. Senior investor protection

Uses grants to states to protect senior investors

Subtitle J— Self-funding of the Securities and Exchange Commission

Section 991. Securities and Exchange Commission self-funding

Provides for the SEC to become a self-funded organization.

Section-by-Section Summary

Title X--Consumer Financial Protection Agency

Section 1001. Short Title

Establishes the name of the title to be the “Consumer Financial Protection Agency Act of 2009.”

Section 1002. Definitions

Subtitle A –The Consumer Financial Protection Agency.

Section 1011. Establishment of the Agency

Establishes the Consumer Financial Protection Agency (CFPA) as an independent agency in the executive branch to regulate the provision of financial products and services to consumers.

Section 1012. Board of Directors

Vests the management of the CFPA in a 5 member Board – 4 of whom are appointed by the president and confirmed by the Senate, and the Chairperson the Financial Institutions Regulatory Administration (FIRA). Establishes the terms of members of the Board and compensation levels. Requires the President to designate 1 member of the Board to serve as Director, who shall be the Chief Executive of the Board.

Section 1013. Executive and Administrative Powers

Authorizes the Board to establish general policies with respect to all executive and administrative functions of the CFPA; provides for the Director to exercise executive and administrative functions; establishes a quorum and majority vote requirement for the transaction of business.

Section 1014. Administration

Authorizes the CFPA to appoint and employ officials and professional staff, and requires the CFPA to establish research, community affairs, and consumer complaint units. Establishes an Office of Fair Lending and Equal Opportunity and an Office of Financial Literacy.

Section 1015. Consumer Advisory Board

Provides for the establishment of a Consumer Advisory Board to advise and consult with the Agency on the exercise of its functions.

Section 1016. Coordination

Requires the CFPA to coordinate with other Federal agencies and State regulators to promote consistent regulatory treatment of consumer and investor products and services. This section also requires the CFPA to coordinate consumer education initiatives with each agency that is a member of the Financial Literacy and Education Commission.

Section 1017. Reports to Congress

Requires the CFPA to prepare and submit reports to the President and Congress concerning the Agency’s regulation, supervision, and enforcement activities.

Section-by-Section Summary

Section 1018. Funding; Fees and Assessments; Penalties and Fines

Provides authority for the CFPA to collect annual fees or assessments to recover funds expended based on the size, complexity, and risk posed of the covered person; requires the Federal Reserve to contribute to the operating budget of the CFPA; establishes a victims' relief fund for civil penalties obtained by the CFPA.

Section 1019. Effective Date

Provides that this subtitle shall become effective on the date of enactment of this Act.

Subtitle B – General Powers of the CFPA.

Section 1021. Mandate and Objectives

Mandates the CFPA to promote transparency, simplicity, fairness, accountability and access in the market for consumer financial products and services. Establishes the objectives of the Agency, which include ensuring that consumers have and understand information needed to make decisions about consumer financial products and services; that consumers are protected from deception and abuse; that markets for consumer products and services operate fairly and efficiently with growth and innovation; and that all consumers have access to financial services.

Section 1022. Authorities

Authorizes the CFPA to administer, enforce and otherwise implement this title, and to administer and enforce rules with respect to a number of consumer protection laws. It permits the CFPA to prescribe rules; set standards for rulemaking; and permits the CFPA to provide exemptions from certain rules. This section also gives the CFPA supervisory and examination authority for consumer compliance; this authority is exclusive as to banking institutions. It creates a mechanism for resolving any supervisory disputes between the CFPA and FIRA. This section gives the CFPA principal authority to enforce this title, and provides for other federal agencies to make referrals of violations to the Agency and to have backstop authority to enforce the laws.

Section 1023. Collection of Information; Confidentiality Rules

Grants the CFPA authority to gather information for research purposes regarding business conduct and to prescribe rules regarding the confidential treatment of information it obtains under this title.

Section 1024. Limitations on Authorities of the CFPA; Preservation of Authorities

Excludes from the authority of the CFPA merchants, retailers, and other sellers of nonfinancial goods and services, including real estate brokerage activities. Also excludes these entities for certain credit transactions. Specifies other exclusions, including persons regulated by the SEC and CFTC for activities regulated by those agencies. Prohibits the CFPA from establishing a usury limit.

Section 1025. Monitoring; Assessments of Significant Rules; Reports

Requires the CFPA to monitor for risks to consumers in the market for consumer financial products and services and publish a report of significant findings of its monitoring activities at least once

Section-by-Section Summary

each year. This section also requires the CFPA to assess each significant rule it adopts under this title three years after it is effective, but no later than five years afterwards.

Section 1026. Authority to Restrict Mandatory Pre-Dispute Arbitration

Permits the CFPA, by rule, to prohibit or impose conditions on mandatory pre-dispute arbitration agreements between consumers and covered persons if doing so is in the public interest and for the protection of consumers.

Section 1027. Supervision of Nondepository Covered Persons

Requires the CFPA to develop risk-based programs to supervise nondepository covered persons. The CFPA is authorized to prescribe registration, reporting, and examination standards based on an assessment by the CFPA of risks posed to consumers, and other criteria. The CFPA is authorized to require reports from nondepository covered persons.

Section 1028. Effective Date

Provides that this subtitle become effective on the designated transfer date.

Subtitle C – Specific CFPA Authorities

Section 1031. Prohibiting Unfair, Deceptive, or Abusive Acts or Practices

Authorizes the CFPA to make rules and take actions to prevent a covered person from committing or engaging in unfair, deceptive or abusive acts or practices under Federal law in connection with any transaction with a consumer for a financial product or service.

Section 1032. Disclosures

Authorizes the CFPA to prescribe rules to ensure appropriate and effective disclosures to consumers of the costs, benefits, and risks associated with any consumer financial product or service. Also requires the Agency to propose model disclosures that integrate TILA and RESPA disclosures within one year after the transfer date.

Section 1033. Sales Practices

This section authorizes the CFPA to adopt rules regarding the manner, settings, and circumstances for the provision of consumer financial products or services.

Section 1034. Consumer Testing and Pilot Disclosures

Requires the CFPA to establish standards and procedures for the approval of pilot disclosures to be provided to consumers by covered persons. Such pilots must be based on consumer testing that indicate the pilot would improve disclosures to consumers.

Section 1035. Adopting Operational Standards to Deter Unfair, Deceptive, or Abusive Practices

Encourages States to prescribe standards for covered persons, other than insured depository institutions and credit unions, to prevent and detect unfair, deceptive, abusive, fraudulent, or illegal transactions in the provision of consumer financial products or services. Authorizes the CFPA to prescribe such standards.

Section-by-Section Summary

Section 1036. Duties of Covered Persons

Requires the CFPA to adopt rules imposing duties on a covered person, or an employee of a covered person, or agent or independent contractor for a covered person, who deals directly with consumers. The rules prescribed under this section are enforceable only by the CFPA in an administrative proceeding or by state regulator in an appropriate administrative proceeding.

Section 1037. Consumer Rights to Access Information

Authorizes the CFPA to prescribe rules requiring a covered person to make available to consumers certain information in an electronic form usable by consumers, with certain exceptions, such as confidential commercial information.

Section 1038. Prohibited Acts

This section makes it unlawful for any person to market, offer or sell financial products or services in violation of this title or rule or order adopted by the CFPA.

Section. 1039. Effective Date

Provides that this subtitle becomes effective on the designated transfer date.

Subtitle D – Preservation of State Law

Section 1041. Relation to State Law

Confirms that this title, and any rule adopted by the CFPA, will not preempt State law if State law provides greater protection for consumers.

Section 1042. Preservation of Enforcement Powers of States

Authorizes any State attorney general to bring civil actions for violations of this title. Before initiating any action, a State attorney general or appropriate State regulator must provide prior notice to the CFPA where practicable. Confirms that this title has no impact on the authority of State securities regulators or State insurance regulators regarding enforcement actions or rulemaking with regards to persons these agencies regulate, with the exception of credit, mortgage, and title insurance.

Section 1043. State Law Preemption Standards for National Banks and Subsidiaries Clarified

Amends the National Bank Act to establish the State law preemption standards for national banks and their subsidiaries, including prohibiting discrimination against national banks.

Section 1044. Clarification of Law Applicable to Non-Depository Institutions Subsidiaries

Clarifies that State law applies to State-chartered nondepository institution subsidiaries and affiliates of national banks.

Section 1045. State Law Preemption Standards for Federal Savings Associations Clarified

Amends the Home Owners' Loan Act to establish State law preemption standards for Federal savings associations and their subsidiaries, including prohibiting discrimination against Federal savings associations.

Section-by-Section Summary

Section 1046. Visitorial Standards for National Banks and Savings Associations

Establishes the visitorial powers provisions of State attorneys general under the National Bank Act and the Home Owners' Loan Act.

Section 1047. Clarification of Law Applicable to Non-Depository Institutions Subsidiaries

Clarifies that State law applies to State-chartered nondepository institution subsidiaries and affiliates of Federal savings associations.

Section 1048. Effective Date

Provides that this subtitle becomes effective on the designated transfer date.

Subtitle E – Enforcement Powers

Section 1051. Definitions

Section 1052. Investigations and Administrative Discovery

Authorizes the CFPA to issue subpoenas for documents and testimony. Authorizes demands of materials, provides for confidential treatment of demanded material, provides for the CFPA to petition a Federal District Court for enforcement, provides for petition to modify or set aside a demand, and provides for custodial control and district court jurisdiction.

Section 1053. Hearings and Adjudication Proceedings

Authorizes the CFPA to conduct hearings and adjudication proceedings, with special rules for cease-and-desist proceedings, temporary cease-and-desist proceedings, and for enforcement of orders in the United States District Court.

Section 1054. Litigation Authority

Authorizes the CFPA to commence a civil action against a person who violates a provision of this title, enumerated consumer law or any rule or order.

Section 1055. Relief Available

Provides for relief for consumers through administrative proceedings and court actions for violations of this title, including civil money penalties.

Section 1056. Referrals for Criminal Proceedings

Authorizes the CFPA to transmit evidence of conduct that may constitute a violation of Federal criminal law to the Attorney General.

Section 1057. Employee Protections

Provides protection against firings of or discrimination against employees who provide information or testimony to the CFPA regarding violations of this title.

Section 1058. Effective Date

Provides that this subtitle becomes effective on the designated transfer date.

Section-by-Section Summary

Subtitle F – Transfer of Functions and Personnel and Transitional Provisions

Section 1061. Transfer of Consumer Financial Protection Functions

Transfers functions relating to consumer financial protection from the Federal banking agencies (Federal Reserve, OCC, OTS and FDIC) and NCUA , the Department of Housing and Urban Development and the Federal Trade Commission to the CFPA subject to backstop enforcement authority.

Section 1062. Designated Transfer Date

Identifies the date of transfer of functions to the CFPA as between 6 and 18 months after the date of enactment of this title and subject to a six month extension. The transfer of functions must be complete not later than 2 years after the date of enactment of this title.

Section 1063. Savings Provision

Clarifies that existing rights, duties, obligations, orders, and rules of the Federal banking agencies, the NCUA , the Department of Housing and Urban Development and the Federal Trade Commission are not affected by the transfer.

Section 1064. Transfer of Certain Personnel

Provides for the transfer of personnel from various agencies to the CFPA and establishes employment and pay protection for two years and benefits.

Section 1065. Incidental Transfers

Authorizes the Director of the Office of Management and Budget, in consultation with the Secretary of the Treasury, to make additional incidental transfers of assets and liabilities of the various agencies. This provision sunsets after 5 years.

Section 1066. Interim Authority of the Secretary

Provides the Secretary of the Treasury authority to perform the functions of the CFPA under this Title until three of the appointed Board members hold office in accordance with section 1012 (Subtitle A). This section authorizes to be appropriated such sums as are necessary to carry out this section.

Subtitle G. Regulatory Improvements

Section 1071. Collection of Deposit Account Data

Authorizes collection of deposit account data to promote awareness and understanding of the access of individuals and communities to financial services, and to identify business development needs and opportunities.

Section 1072. Small business Data Collection

Authorizes the CFPA to collect data on small businesses to facilitate enforcement of fair lending laws and enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned and minority-owned small businesses.

Section-by-Section Summary

Subtitle H – Conforming Amendments

Section 1081. Amendments to the Inspector General Act of 1978

Makes conforming amendments.

Section 1082. Amendments to the Privacy Act of 1974

Makes conforming amendments.

Section 1083. Amendments to the Alternative Mortgage Transaction Parity Act of 1982

Makes conforming amendments.

Section 1084. Amendments to the Community Reinvestment Act of 1977

Makes conforming amendments.

Section 1085. Amendments to the Electronic Fund Transfer Act

Makes conforming amendments.

Section 1086. Amendments to the Equal Credit Opportunity Act

Makes conforming amendments.

Section 1087. Amendments to the Expedited Funds Availability Act

Makes conforming amendments.

Section 1088. Amendments to the Fair Credit Billing Act

Makes conforming amendments.

Section 1089. Amendments to the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act

Makes conforming amendments.

Section 1090. Amendments to the Fair Debt Collection Practices Act

Makes conforming amendments.

Section 1091. Amendments to the Federal Deposit Insurance Act

Makes conforming amendments.

Section 1092. Amendments to the Gramm-Leach-Bliley Act

Makes conforming amendments.

Section 1093. Amendments to the Home Mortgage Disclosure Act

Makes conforming and further amendments. The amendments require new data fields to be reported to the CFPA, including borrower age, total points and fees information, loan pricing, prepayment penalty information, house value for loan to value ratios, period of introductory interest rate, interest-only or negative amortization information, terms of the loan, channel of origination, unique originator ID from the Secure and Fair Enforcement for Mortgage Licensing Act, universal loan identifier, parcel number to permit geocoding, and credit score.

Section-by-Section Summary

Section 1094. Amendments to the Home Owners Protection Act of 1998

Makes conforming amendments.

Section 1095. Amendments to the Home Ownership and Equity Protection Act of 1994

Makes conforming amendments.

Section 1096. Amendments to the Omnibus Appropriations Act, 2009

Makes conforming amendments.

Section 1097. Amendments to the Real Estate Settlement Procedures Act

Makes conforming amendments.

Section 1098. Amendments to the Right to Financial Privacy Act of 1978

Makes conforming amendments.

Section 1099. Amendments to the Secure and Fair Enforcement for Mortgage Licensing Act of 2008

Makes conforming amendments.

Section 1100. Amendments to the Truth in Lending Act

Makes conforming amendments.

Section 1101. Amendments to the Truth and Savings Act

Makes conforming amendment.

Section 1102. Telemarketing and Consumer Fraud and Abuse Prevention Act

Makes conforming amendments.

Section 1103. Amendments to the Paperwork Reduction Act

Makes conforming amendments.

Section 1104. Effective Date

Provides that sections 1083 through 1103 become effective on the designated transfer date.

Section-by-Section Summary

Title XI – Financial Regulatory Agencies Transition Oversight Commission

Section 1151. Financial Regulatory Agencies Transition Oversight Commission.

This section establishes a Financial Regulatory Agencies Transition Oversight Commission.

Subsection (a). Definitions.

This subsection defines key terms such as “new agency.”

Subsection (b). In General.

This subsection provides that the purpose of the Commission is to ensure that the new agencies established by this Act have an orderly and organized start up, attract and retain a qualified workforce, and establish comprehensive training and benefits programs.

Subsection (c). Membership.

This subsection sets forth the composition and membership requirements for the Commission.

Subsection (d). Responsibilities of the Oversight Commission.

This subsection describes the various responsibilities of the Commission, including, to oversee the transition of responsibilities and employees to the new agencies, and to review and approve the training, workforce development, workforce flexibility, and recruitment and retention plans of the new agencies.

Subsection (e). Oversight Commission Personnel Matters.

This subsection addresses various Commission personnel matters, such as the appointment of personnel, the detail of government employees and the procurement of temporary services.

Subsection (f). Administrative Matters.

This subsection addresses various administrative matters, such as the powers of the chairperson of the Commission, the frequency of meetings, a study that the Commission must submit to Congress annually.

Subsection (g). Termination of the Oversight Commission.

This subsection terminates the Commission 3 years after the date of enactment of this Act.

Section-by-Section Summary

Title XII – Federal Reserve Provisions

Section 1201. Federal Reserve Act Amendment on Emergency Lending Authority

This section amends Section 13(3) of the Federal Reserve Act which governs emergency lending. The Board of Governors is authorized to lend to “financial utilities or payment, clearing or settlement activities that the Agency for Financial Stability determines are, or are likely to become, systemically important, or any program or facility with broad-based participation.” The Board of Governors must report to the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Financial Services on 13(3) lending within 7 days after it is initiated, and periodically thereafter. Identities of recipients of emergency lending may be withheld for 1 year.

Section 1202. Selection of Boards of Directors of Federal Reserve Banks

This section amends Section 4 of the Federal Reserve Act, which determines the governance structure of the 12 Federal Reserve Banks. The 3 class A directors of each Federal Reserve Bank will be appointed by the Board of Governors of the Federal Reserve. The 3 class B directors, and 2 of the 3 class C directors, will be appointed by the Board of Governors. The remaining class C director will be appointed by the President, and will serve as chair of the respective Reserve Bank Board of Directors. The chair will have expertise in “economic policy, business, banking, or financial markets.” The Board of Governors is required to establish a public process for soliciting comments relating to the selection of class B and C directors.

Section 1203. Reviews of Special Federal Reserve Credit Facilities

This section amends Section 714 of Title 31, United States Code, to establish Comptroller General audits of emergency lending by the Board of Governors of the Federal Reserve under Section 13(3) of the Federal Reserve Act. There is delayed disclosure of recipient identities for 1 year.

Section 1204. Public Access to Information

This section amends Section 2B of the Federal Reserve Act. The Comptroller General audits of 13(3) lending established under Section 1203 of this Act, the annual financial statements prepared by an independent auditor for the Board of Governors, and reports to the Senate Committee on Banking, Housing and Urban Affairs on 13(3) lending established under Section 1201 of this Act will be displayed on a webpage that will be accessed by an “Audit” link on the Board of Governors website. The required information will be made available within 6 months of the date of release.